

Report on the

LICENSING BOARD FOR GENERAL CONTRACTORS

Montgomery, Alabama



Department of Examiners of Public Accounts

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August 15, 2007

Senator Larry Dixon
Chairman, Sunset Committee
Alabama State House
Montgomery, AL 36130

Dear Senator Dixon,

This report was prepared to provide information for use by the Sunset Committee in conducting its review and evaluation of the operations of the **Licensing Board for General Contractors** in accordance with the *Code of Alabama 1975*, Section 41-20-9.

The report contains unaudited information obtained from the management, staff, and records of the **Licensing Board for General Contractors**, in addition to information obtained from other sources.

Please contact me if you have any questions concerning this report.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald L. Jones".

Ronald L. Jones,
Chief Examiner

Examiners
Tony Yarbrough
Janet Berry

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PROFILE

Purpose/Authority

The Licensing Board for General Contractors licenses and regulates the practice of contracting and subcontracting in Alabama. The board operates under the authority of the *Code of Alabama 1975*, Sections 34-8-1 through 34-8-28.

Board Characteristics	
Members	Five (5_) <i>Code of Alabama 1975</i> , Section 34-8-20
Term	5 year staggered terms <i>Code of Alabama 1975</i> , Section 34-8-20
Selection	<ul style="list-style-type: none">• Appointed by the Governor (<i>Code of Alabama 1975</i>, Section 34-8-20)• Governor may remove members without cause (<i>Code of Alabama 1975</i>, Section 34-8-20)• Governor designates the chairman, vice-chairman and secretary/treasurer (<i>Code of Alabama 1975</i>, Section 34-8-22)
Qualifications	<ul style="list-style-type: none">• All must have 10 years of experience as a contractor,• One must have majority of business in highway construction• One must have a majority of business in public utility construction• One must have majority of business in building construction <i>Code of Alabama 1975</i> , Section 34-8-20
Racial Representation	No specific statutory requirement. No minority members
Geographical Representation	No statutory requirement
Consumer Representation	No statutory requirement.
Other Representation	The membership of the board shall be inclusive and reflect the racial, gender, geographical, urban/rural, and economical diversity of the state. <i>Code of Alabama 1975</i> , Section 34-8-20

Compensation	\$200 per day for attending sessions of the board or its committees, and for time actually spent in necessary travel in attending meetings of the board or its committees. In addition, board members receive travel and per diem as paid to state employees. <i>Code of Alabama 1975, Section 34-8-22</i>												
<u>Operations</u>													
Administrator	Joseph C. Rogers, Executive Secretary Annual salary \$89,018.40 Unclassified merit system employee Appointed and salary set by the board												
Location	2525 Fairlane Drive Montgomery, AL 36116 Leasing office space from Executive Park, LLC <table><tr><td>Total Sq. Ft.</td><td>Annual Cost</td><td>Monthly Cost</td><td>Cost Per Sq. Ft.</td></tr><tr><td>7,733</td><td>\$80,423.20</td><td>\$6,701.93</td><td>\$10.40</td></tr></table>					Total Sq. Ft.	Annual Cost	Monthly Cost	Cost Per Sq. Ft.	7,733	\$80,423.20	\$6,701.93	\$10.40
Total Sq. Ft.	Annual Cost	Monthly Cost	Cost Per Sq. Ft.										
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Type of License	General contractor and subcontractor licenses <u>As of 2/28/07</u> General Contractor 6,082 Subcontractor <u>2,373</u> Total Licensees 8,455												
Renewal	Licenses renew annually throughout the year, on a monthly schedule determined by the first letter of the surname or company name of the renewing licensee. Licenses expire on the last day of the renewal month. Renewal applications are due 30 days prior to the end of the renewal month. The board grants <u>general contractors</u> a 90-day grace period after the last day of the renewal month to provide a current audited financial statement, which is required for renewal. Any renewal application received from 90 to 365 days after the last day of the renewal month is assessed a \$50 late renewal fee. Licensees with expired licenses who have not applied for renewal 1 year and a day after their renewal month must apply as new applicants. <i>Code of Alabama 1975, Section 34-8-2</i>												

Examinations	<p>In March 2003, the board began examining applicants for a general contractor license. The examination is administered and scored by PSI Examination Services. Subcontractors are not tested.</p> <p>Approved applicants pay the license fee directly to the examination provider. The fee allows applicants a one year window in which to schedule an examination.</p> <p>Examinations are given at four testing sites around Alabama in Birmingham, Huntsville, Mobile and Montgomery.</p> <p>Applicants are allowed unlimited testing attempts within the one-year window.</p> <p><i>Code of Alabama 1975, Section 34-8-3</i></p> <p><u>Examination Statistics:</u></p> <table><tr><td>Year</td><td>Pass</td><td>Fail</td><td>Total</td></tr><tr><td>2003 ⁽¹⁾</td><td>89 (81%)</td><td>21 (19%)</td><td>110</td></tr><tr><td>2004</td><td>486 (81%)</td><td>113 (19%)</td><td>599</td></tr><tr><td>2005</td><td>484 (84%)</td><td>89 (16%)</td><td>573</td></tr><tr><td>2006</td><td>528 (84%)</td><td>98 (16%)</td><td>626</td></tr><tr><td>Total</td><td>1587</td><td>321</td><td>1,908</td></tr></table> <p>(1) From March 2003</p>	Year	Pass	Fail	Total	2003 ⁽¹⁾	89 (81%)	21 (19%)	110	2004	486 (81%)	113 (19%)	599	2005	484 (84%)	89 (16%)	573	2006	528 (84%)	98 (16%)	626	Total	1587	321	1,908
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Continuing Education	No statutory requirement																								
Reciprocity	The board has no specific statutory requirement to provide reciprocal licenses, however; it does have reciprocal license agreements with Arkansas, Louisiana, Mississippi and Tennessee. If an applicant has been licensed in good standing for 3 or more years, the industry portion of the examination will be waived. Reciprocal states may require their business law portion of the examination be taken.																								
Employees	19, of which 6 are minority employees																								
Legal Counsel	Kathleen A. Brown, Esq., a private attorney P.O. Box 1606 423 South Hull Street, Suite 2F Montgomery, AL 36104																								
Subpoena Power	None within licensing law.																								

Internet Presence	www.genconbd.state.al.us . The boards' web site contains: <ul style="list-style-type: none"> • Home page with contact information • Application instructions • Renewal information • Reciprocity information • Forms • Testing information • Licensee Roster • Law • Rules and Regulations • FAQs • Related links • Consumer Complaints <p>Online renewal is not available to licensees.</p>
Attended Board Member Training	The executive secretary and three board members,
<u>Financial</u>	
Source of Funds	Licensing fees
State Treasury	Yes – Special Revenue Fund 0368
Unused Funds	<p>Any unused balance over \$30,000 at fiscal year end is to be transferred to the general fund.</p> <p><i>Code of Alabama 1975, Section 34-8-25</i></p>

SIGNIFICANT ITEMS

1. The board's administrative rules levy two fees that the board has no authority to charge. Various Attorney General's opinions have stated that fees cannot be charged without direct or implied statutory authority. We find no such authority in the board's licensing law for the fees provided in the following administrative rules adopted by the board.

- Administrative Rule 230-X-1-.34(2) states, "The board is entitled to charge each applicant an examination fee as set by the board for each written and/or oral examination."

- Administrative Rule 230-X-1-34(7) states, “Whenever any applicant is advised to appear before the board for an interview and fails to appear at the scheduled time and place without notifying the board at least three (3) days in advance, such applicant shall pay an additional fee as set by the board before being rescheduled for interview.”

2. Seven sections of the administrative rules presented on the Licensing Board for General Contractor’s website are not current. In addition, rulebooks available for pickup at the front desk of the board’s office and rulebooks used by the board’s staff are not current. Consequently, incorrect rules are being used by the board’s staff and presented to the public and to the board’s licensees. An adequate system of internal control requires that the public be provided with the most up-to-date version possible of board rules and procedures in order to provide assurance that correct and authorized amounts, requirements and procedures are explained and followed.

Administrative Rule No./ Description	Web-Site Information Last Entry As of 1/5/07	Legislative Reference Service Last Entry As of 11/15/06
230-X-1-.01 <u>Renewal Procedures</u>	Amended: 3/21/05 Certified: Filed 5/20/05	<u>Repealed and New Rule:</u> Filed August 26, 2005; effective September 30, 2005.
230-X-1-.12 <u>Assembling Machinery.</u> (Repealed)	Filed: 9/16/82	<u>Amended:</u> Filed August 1, 2005; effective September 5, 2006.
230-X-1-.17 <u>Installation of Machinery And/Or Equipment.</u>	Statutory Authority: <i>Code of Alabama 1975,</i> 34-8-22	<u>Amended:</u> Filed August 1, 2006; effective September 5, 2006.
230-X-1-.19 <u>Filing Financial Statements By Prime Contractors</u>	Amended: Filed 3/21/05 Certified: Filed 5/20/05	<u>Repealed and New Rule:</u> Filed August 25, 2005; effective September 30, 2005.
230-X-1-.24 <u>Carpet Installation</u>	Repealed: Filed 7/2/92	<u>New Rule:</u> Filed August 22, 1996; effective September 26, 1996.
230-X-1-.26 <u>Fifty-One Percent Regulation</u>	Amended: 12/17/97	<u>Amended:</u> Filed March 5, 1993. <u>Amended:</u> Filed August 1, 2006; effective September 5, 2006.
230-X-1-.31 <u>Audit/Review/Compilation Of Financial Statements Submitted By Prime Contractors</u>	The web-site does not provide a link to the text of this rule.	<u>Amended (Title Only):</u> Filed December 16, 1997; effective January 20, 1998.
230-X-1-.34 <u>Licensee And Examination</u>	Amended: Filed 3/21/05 Certified: 5/20/05	<u>Repealed and New Rule:</u> Filed August 25, 2005; effective September 30, 2005. <u>Amended:</u> Filed August 1, 2006; effective September 5, 2006
230-X-1-.40 <u>Reciprocity For License</u>	Filed: 2/18/05 Certified: Filed 4/27/05	<u>Repealed and New Rule:</u> Filed August 25, 2005; effective September 30, 2005

3. The board does not maintain a current record of the qualifying agent for each licensee. As a condition of licensure, licensed contracting businesses must have a person (qualifying agent) on staff that has passed the board's examination. The board's Administrative Rule, Section 230-X-01-.34(5)(e) states, "In the event that the qualifying agent . . . leaves the employment of the business, or his or her employment status changes, written notice must be given within (10) days to the board."

Also, Administrative Rule, Section 230-X-1-.36(3)(a) states, "When the qualifying party terminates employment with the licensee, the State Licensing Board for General Contractors must be notified in writing, by the licensee, within 30 days of the association and another party must qualify within 60 days of the disassociation or licensee will be subject to citation, suspension or revocation of license.

The board's staff stated that the board does not periodically monitor or verify the qualifying agent for each contractor. As a result, the board's database of licensee information is not updated with current information on the licensees' qualifying agents, and the board does not know if its rule is being followed. Of the seventeen licensee files reviewed to determine that correct and complete documentation was being maintained as evidence of licensee eligibility and proof of qualifications for licensure, one file contained an incorrect qualifying agent. A review of paper documents on file did not resolve the issue but revealed that changes of the licensee's qualifying agent had been reported to the board but had not been entered into the electronic database. In addition, the available information indicated that one licensee had no qualifying agent on staff, but continued to be licensed without notice or action by the board.

4. The board does not always require three references from applicants for licensure as a subcontractor, although the law requires three references. During our examination, we found that the board approved an application from a subcontractor that did not contain the three required work references. When asked about the references, the board's director stated that at times subcontractors are approved for licensure with only one reference because subcontractors usually work with the same contractor for long periods of time and can't furnish additional references. The licensee's file did not indicate that this was the case for the licensee in question.

The *Code of Alabama 1975*, Section 34-8-7(c)(4) requires a subcontractor to, "Furnish three references from any combination of the following: Licensed general contractors, registered professional engineers, or registered architects, for whom work has been completed along with a statement of experience, personnel, and equipment."

5. The board does not appear to be distributing funds to all accredited public institutions of higher education in Alabama offering courses in building science and/or civil engineering, as required by law. Although Alabama A&M University appears qualified to receive funds, no funds have been sent to the university.

The *Code of Alabama 1975*, Section 34-8-28(a) requires that, “An amount of one hundred dollars (\$100) from the fees required for application and renewal for certification and registration of general contractors in Section 34-8-2, and an amount of fifty dollars (\$50) from the fees required for application and renewal of the license of a subcontractor pursuant to Section 34-8-7, shall be distributed by the State Licensing Board for General Contractors at the end of each fiscal year to all accredited public institutions of higher education offering American Council for Construction Education accredited courses in building science which are in the candidate status of the American Council for Construction Education and to institutions of higher education offering courses leading to a bachelor of civil engineering degree which offers courses in highway engineering and construction at the undergraduate and graduate levels and whose civil engineering program is accredited by the Engineering Accreditation Commission of the Accreditation Board for Engineering and Technology (ABET). Funds identified by the general contractors and subcontractors for building science shall be distributed pro rata among institutions based upon the number of full-time equivalent students enrolled in the department of building science at the institution. Funds identified by the general contractors and subcontractors for civil engineering shall be distributed pro rata among institutions based upon the number of full-time equivalent civil and pre-civil engineering students enrolled at the institution.”

The Internet websites of the Engineering Accreditation Commission of the Accreditation Board for Engineering and Technology (ABET) and the American Council for Construction Education (ACCE) building science list colleges in Alabama that offer accredited courses. Alabama A&M University located in Normal, AL is listed as accredited as of 2001 by ABET and offers a Bachelor of Science in Civil Engineering but has not received any funding from the board. Inquires to board staff revealed that Alabama A&M University has not been considered as a possible recipient of funds provided by the *Code of Alabama 1975*, Section 34-8-28(a).

STATUS OF PRIOR FINDINGS & SIGNIFICANT ITEMS

All findings and significant items from our most recent prior routine legal compliance examination and sunset review of the board have been resolved except the following:

Previous Sunset Examination

Prior Significant Item – The board does not make timely distribution of funds collected for distribution to public institutions of higher education at the end of each fiscal year, as required by law. The fiscal year ends September 30 of each year, but the transfer of funds is delayed six months or longer in order to have sufficient operating funds on hand.

The *Code of Alabama 1975*, Section 34-8-28 (a) requires that one hundred dollars (\$100) and fifty dollars (\$50) of the fees required for application and renewal of the license of a

contractor and subcontractor respectively, less 5% the board is allowed for administrative expenses associated with the collection and distribution of said fees, must be distributed by the State Licensing Board for General Contractors ***at the end of each fiscal year*** to all accredited public institutions of higher education offering the qualifying engineering or building science curriculum.

The board delays distribution of the funds in order to compensate for the effects of a statutory requirement in the ***Code of Alabama 1975***, Section 34-8-25, which provides that any unspent, unobligated funds in excess of \$30,000 remaining in the board's fund balance at year end must be transferred to the State's General Fund. The \$30,000 cap on fund balance has been in the board's statutes since at least as far back as 1951 and now funds approximately two weeks of operations in the next fiscal year. The board delays distributing prior year funds to the institutions of higher education in order to maintain a sufficient fund balance to pay for operations while new fee collections accumulate.

Prior Recommendation – The board should seek remedial legislation.

Current Status – The condition remains unresolved. HB784 was introduced in the 2007 Legislative Session by Representative Sanderford to authorize the board to retain 33 per cent of its budget at the end of each fiscal year. The bill was not successful.

Previous Compliance Examination

Prior Finding – The board utilizes temporary employees to the extent that it appears to be circumventing a requirement to employ its personnel through the State's Merit System.

The second paragraph of Attorney General Opinion 80-00200 to the Commissioners of the Public Service Commission states, "The general rule is that all state employees must be employed on a competitive basis in the classified service under the State Merit System Law unless such employment positions are specifically exempt from the classified service. Section 36-26-10 ***Code of Alabama 1975***, defines certain "exempt" and "unclassified" positions within the state service and provides that all other positions in the state service shall be classified positions subject to the competitive employment procedures of the Merit System."

No exception is authorized for the Licensing Board for General Contractors. State Personnel Department Rule 670-X-3-.01(b)(2) addresses temporary appointments and limits such appointments to 104 days actually worked. The State Personnel Department Procedures Manual, Section 5 part 2 addresses temporary appointments with the following language:

"When service to be provided by an employee is for a temporary period not to exceed 104 days actually worked, or 832 hours, a person may be selected without regard to standing on a register." "Successive temporary appointments to the same position, or of

the same person, shall not be made under this provision. There must be a break in service. Generally, this is defined as a break in employment of at least 60 days.”

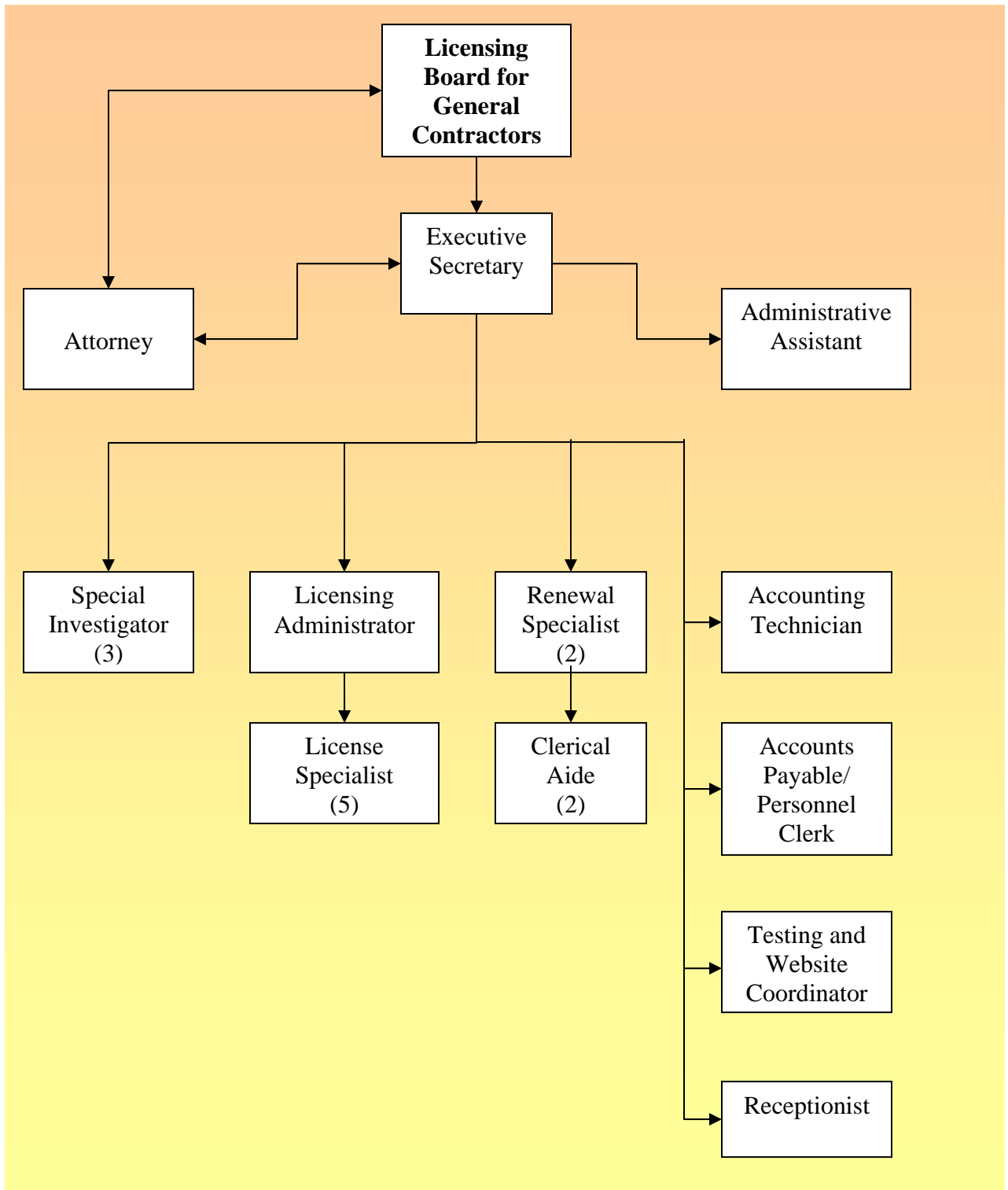
A prior report of the results of a review of the board’s operations conducted under the state’s sunset law pointed out that temporary employees were often re-employed by the board without the required break in service.

The board’s year round employment of temporary personnel in the same positions indicates a need for additional full time positions, which should be filled with personnel hired in the classified service of the state’s merit system.

Prior Recommendation – The board should, with the assistance of the State Personnel Department, evaluate its staffing levels and work load and establish necessary merit system positions.

Current Status – The condition continues.

ORGANIZATION



PERSONNEL

The board presently employs nineteen (19) people, consisting of the executive secretary, one unclassified merit system employee; fourteen classified full-time, merit system employees and two temporary employees. The executive secretary is appointed by the board, which approves his salary.

Schedule of Employees (2/14/2007)

Classification	Number of Employees	Race		Gender	
		White	Black	Male	Female
Executive Secretary	1	X		X	
Special Investigator	3	X		X	
Account Technician	1	X			X
Administrative Support Asst III	1		X		X
Administrative Support Asst II	3	X			X
Administrative Support Asst II	3		X		X
Administrative Support Asst I	4	X			X
Administrative Support Asst I	1		X		X
Temporary Clerical Aide	1	X			X
Temporary Clerical Aide	1		X		X
Total	19				

The board contracts for legal services with Kathleen Brown, a private attorney, at \$100/hr, plus expenses, total contract not to exceed \$60,000. The contractor is paid per diem and mileage at the same rate as provided to state employees.

PERFORMANCE CHARACTERISTICS

Number of Licensees per Employee – 445

Total Expenditure per Licensee (2005-2006 Fiscal Year) - \$127

Number of Persons per Licensee in Alabama and Surrounding States

	Population (Estimate) ⁽¹⁾	Number of Licensees	Persons per Licensee
Alabama	4,599,030	8455	544
Florida	18,089,888	95,523	189
Georgia	9,363,941	N/A ⁽²⁾	N/A ⁽²⁾
Mississippi	2,910,540	3380	861
Tennessee	6,038,803	21,309	283

⁽¹⁾ July 1, 2006 Census Bureau Population Estimates Report

⁽²⁾ On April 20, 2006, the Georgia legislature passed HB1542, which requires contractors to be licensed by January 1, 2008. As of March 13, 2007 the Georgia Contractors Board has received over 20,000 license applications but will not start issuing licenses until January 1, 2008.

Notification to Licensees of Board decisions to Amend Administrative Rules

The board complied with procedures prescribed in the Administrative Procedure Act (APA), which includes publication of proposed rules in the Administrative Monthly, and public hearings on proposed rules.

Regulation with Other Entities

The Board of Heating and Air Conditioning Contractors, the Board of Electrical Contractors, and the Plumbing and Gas Fitting Examining Board and the Home Builders Licensing Board are licensing and regulatory boards that may also license and regulate the practice of contractors who engage in work licensed by the boards.

Jurisdiction over Unlicensed Practitioners

The board has authority under the *Code of Alabama 1975* to pursue unlicensed practice administratively with a fine (Section 34-8-4), by criminal prosecution (Section 34-8-6(a)), by issuing a cease and desist order (Section 34-8-6(c)), or by requesting an injunction (Section 34-8-6(c)).

Complaints

The board segregates complaints into two types, formal and informal. The *Code of Alabama 1975*, Section 34-8-4 provides that, "Any person may prefer charges of fraud, deceit, negligence, or misconduct against any general contractor licensed hereunder. The charges shall be in writing and sworn to by the complainant and submitted to the board." Complaints that meet these statutory requirements are considered to be formal complaints. All other complaints, such as complaints received by telephone, e-mail, fax, or face-to-face interaction are defined by the board as informal complaints. Based on a sample of eleven complaints, the average length of time from receipt of complaint to resolution is twenty-three days.

Complaint Resolution

Board action on violations resulted in the following:

FY 2003-04	General Contractors	Subcontractors	Owners	Dealers	Permit Officials
Fines	91	71	7	3	0
Warnings	0	0	34	0	0
No Action	1	0	1	0	0
Explanations	0	0	0	0	0
Other	0	0	0	0	0
Total (208)	92	71	42	3	0

FY 2004-05	General Contractors	Subcontractors	Owners	Dealers	Permit Officials
Fines	107	75	6	0	0
Warnings	3	0	49	0	1
No Action	3	0	2	0	0
Explanations	0	0	0	0	0
Other	1	0	1	0	0
Total (248)	114	75	58	0	1

FY 2005-06	General Contractors	Subcontractors	Owners	Dealers	Permit Officials
Fines	180	147	4	0	0
Warnings	3	0	78	0	0
No Action	7	3	9	0	0
Explanations	2	0	0	0	0
Other	0	0	0	0	0
Total (433)	192	150	91	0	0

FY 2006-07 (thru 3/1/07)	General Contractors	Subcontractors	Owners	Dealers	Permit Officials
Fines	85	76	14	0	0
Warnings	2	0	7	0	0
No Action	5	4	12	0	0
Explanations	0	0	0	0	0
Other	0	0	0	0	0
Total (205)	92	80	33	0	0

Source of Information: State Licensing Board for General Contractors Violations Report

The following chart shows the collection of fines assessed for the 2003-04, 2004-05, 2005-06 and up to March 1, 2007:

Fiscal Year	Fines Assessed	Collected In FY 04	Collected In FY 05	Collected In FY 06	Collected In FY 07	Not Collected	Closed by Administrative Action
2003-04	\$ 289,000	\$205,650	\$ 64,000	\$ 0		\$ 5,000	\$14,350
2004-05	\$ 379,500	\$ 0	\$275,750	\$ 58,000		\$27,500	\$18,250
2005-06	\$ 717,250	\$ 0	\$ 0	\$636,500		\$ 59,500*	\$ 0
Thru 3/1/07	\$ 442,000	\$ 0	\$ 0	\$ 0	\$422,500	\$ 19,500	\$ 0
Total	\$1,827,750	\$205,650	\$339,750	\$ 694,500	\$422,500	\$111,500	\$32,600

Source of Information: State Licensing Board for General Contractors Violations Report

* Timing difference due to deposits treated at fiscal year end.

Complaint Process

Investigative Phase	<p>The board receives concerns regarding unlicensed contractors in several ways. All concerns are sent to the board's investigators to determine if they are founded or unfounded. If the concern is unfounded, the assigned investigator informs the person who lodged the concern. If the concern is founded, the investigator notifies the executive secretary that the concern has become a formal complaint.</p> <p>The board utilizes a complaint form that is required to be signed and submitted to the board.</p> <p>If the investigator finds sufficient cause to believe there has been a violation of the board's licensing law, the offender's work is stopped and the offender is informed of the board's intention to take up the matter at its next meeting. The investigator prepares a report and sends it to the executive secretary and to the board's attorney.</p>
Recommendation Phase	<p>When the board's attorney receives the investigator's report, she researches the background of the persons and companies involved for prior violations. She evaluates the current circumstances reported by the investigator and the results of any prior violations. She then recommends a course of action for the board. Most commonly, she recommends a consent agreement that includes a fine. The amount of the recommended fine is based on the number of prior violations and the severity of the current violation. Unlicensed</p>

	<p>contractors and subcontractors are required to obtain a license before work can be resumed on a stopped project.</p> <p>Warning letters are issued that serve notice of a required appearance before the board to explain why the violation occurred and what measures will be taken to ensure that the violation will not occur again. The attorney prepares a recommended action report, and the case is submitted to the board at its next regular meeting for consideration.</p>
Board Action Phase	<p><u>Formal complaints</u> - The board reviews the cases arising from formal complaints at its next available meeting. The board deliberates the case and considers the attorney's recommended action. The board then votes to accept or reject the action recommended. If the recommended action is rejected, the board substitutes other actions.</p> <p><u>Formal Complaints Involving an Administrative Judge</u> - An administrative judge presides over administrative hearings to prosecute a licensee for violations of the licensing law or the board's rules, if one is deemed needed. The accused is served notice of the charges and the date and time set for the hearing by a process server or by certified mail. The accused, accompanied by a lawyer have the right to appear before the administrative judge and to cross examine witnesses and present evidence and to present testimony in defense. The administrative judge makes a record of findings of fact and recommends a penalty consistent with the findings. The board reviews the findings and recommendations of the administrative judge and accepts, rejects or amends the administrative judge's recommendation. The board then notifies the accused of its ruling. The rules governing administrative hearings provided in the Administrative Procedure Act are followed in the formal hearings.</p>
Resolution Phase	<p>The board sends all offenders a letter along with a consent administrative order for the offender to sign and return. The letter states that the signed order and fine must be returned within 30 days of receipt of the letter. Once the fine and consent administrative order are received, the fine is deposited into the board's fund, a license is issued to unlicensed contractors and subcontractors (if they have submitted an application) and all documents are filed. If the fine is not paid within 30 days, the attorney begins contacting the offender to collect the fine and required documents. An unofficial grace period that appears to be as long as two years</p>

	may occur while the attorney continues to attempt collecting fines. Eventually, some fines are administratively closed; although, notice is posted in the licensee's (if the offender was licensed) computer file that a license cannot be issued, updated, or renewed unless the fine is paid in full. Reasons for closing fines include the offender becoming bankrupt, the offender relocating to another state, or the offender ignoring the fine.
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SMART BUDGETING

Acts of Alabama, 2004-50 (HJR89) states, "That all state agencies and entities receiving legislative appropriations are requested to submit to the Joint Legislative Budget Committee budget proposals in performance based budget language and form. This request is applicable for proposals for the 2005-2006 fiscal year to be submitted to the 2005 Regular Session and for each succeeding fiscal year. The Director of Finance is requested to inform each public agency or entity of our desires concerning this matter."

To comply with this request, the Director of Finance implemented a system of budgeting that requires each agency to report its performance, the system to be named SMART, an acronym for Specific, Measurable, Accountable, Responsive, Transparent.

As a part of the SMART Budgeting system, each agency is required to submit its goals and objectives to the Department of Finance. Goals are long-term, multi-year targets, which are to be achieved through accomplishment of objectives, which are single-year targets. Both goals and objectives should be designed with an end point so that progress toward their achievement can be measured and reported.

The SMART Budgeting system includes an Operations Plan and a Quarterly Performance Report. The Operations Plan describes what will be done with the funds provided through appropriations. The agency's goals are presented in the Operations Plan. The performance report only presents information on achievement of an agency's annual objectives, and is the only SMART Budgeting report that presents performance information. If an agency has not included at least one objective for each goal, performance relative to that goal will not be reported. For the 2006 fiscal year, each licensing/regulatory agency was required to have at least one goal and one or more objectives directly related to the goal. Additional annual objectives were allowed without corresponding goals. The board's Operations Plans for the 2005-06 and 2006-07 fiscal years and the board's Performance Report for the 2005-06 fiscal year are presented in the appendices of this report.

Among agencies that were not accustomed to reporting performance, we found confusion as to how to design the goals and objectives and how to differentiate between goals and objectives. Routinely we found goals with no end points and with no directly related objectives. Some goals and objectives were too abstract to be measurable, and progress

toward their achievement could not be meaningfully reported. The Department of Finance is aware of these deficiencies and is taking remedial steps.

In these respects, the Licensing Board for General Contractors was no exception. Some goals were open ended and not accompanied by directly related objectives. Some goals and objectives were abstract, and progress toward their achievement could therefore not be meaningfully measured and reported.

The board's 2006 and 2008 SMART Operations Plan and its 2007 SMART Performance Report can be found in the appendices of this report.

The board's performance goals and objectives for the 2006 and 2007 fiscal years and the examiner's comments are presented in the following table.

2006 GOALS (from Operations Plan)	COMMENTS
To insure that only qualified contractors enter the profession.	This is a statement of normal work rather than a performance goal. There is no long-term, measurable target. There is no directly related objective. Consequently, performance relative to this goal was not reported on the performance report.
To maintain essential information on all commercial contractors practicing in Alabama.	This is a statement of normal work rather than a performance goal. There is no long-term, measurable target. There is no directly related objective. Consequently, performance relative to this goal was not reported on the performance report.
To resolve all complaints in a timely manner with satisfactory results.	There is no stated long-term measurable target. There is no directly related objective. Consequently, performance relative to this goal was not reported on the performance report.
To collect violation fees from those contractors who do not adhere to Board regulations.	This is a statement of normal work rather than a performance goal. There is no long-term, measurable target. There is no directly related objective. Consequently, performance relative to this goal was not reported on the performance report.

2006 OBJECTIVES (from Operations Plan)	REPORTED (from Performance Report)	COMMENTS
Reduce the administrative time required to process renewal applications.	.01 (applications divided by hours)	There is no stated benchmark in the objective. Consequently, the reported data does not show whether time was reduced.
Reduce the number of telephone inquiries about the renewal process.	29 calls received per day	There is no stated target in the objective. Consequently, the reported data does not show whether calls were reduced.
Reduce the area of each law enforcement officer.	1/3 state	This objective does not address the performance of any activity. Also, there is no stated target in the objective. Consequently, the reported data does not show whether the area was reduced.

2007 GOALS (from Operations Plan)	COMMENTS
G1: To ensure that only qualified commercial and industrial contractors enter the profession.	This is a statement of normal work, not a measurable performance goal. There is no long-term measurable target in the goal from which to determine progress toward its achievement. Also, there is no directly related objective. Consequently, performance relative to this goal will not be reported on the performance report.
G2: To ensure the timely processing and licensing of new and renewal applications.	There is no stated long-term measurable target in the goal. There is a directly related objective that addresses renewal (not new) applications. The objective has a measurable target consisting of a total number of completed renewals, which does not address the timeliness of processing the renewals. Consequently, performance related to this goal will not be reported.

G3: To enforce laws and regulations to identify contractors who do not adhere to board regulations.	This is a statement of normal work, not a measurable performance target. There is no long-term measurable target in the goal from which to determine progress toward its achievement. There is a related objective with a measurable target consisting of the dollar amount of violations, but it is not clear how achievement of the objective can show progress toward achievement of the goal, as it is written.
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2007 OBJECTIVES (from projected performance report in Operations Plan)	COMMENTS
To reduce the turn around time on renewal applications.	There is no target stated in the objective from which to determine if the objective is achieved. The projected performance report includes a target of 7,533 completed renewals, but the target will not carry forward to the final performance report. If the target of 7,533 renewals is achieved and reported, the performance report will not show whether turn around time has been reduced.
To better enforce board regulations.	There is no target stated in the objective from which to determine if the objective is achieved. The projected performance report includes a target of \$30,000 of violations, but the target will not carry forward to the final performance report. If the target of \$30,000 of violations is achieved and reported, the performance report will not show whether regulations have been better enforced.

FINANCIAL INFORMATION

Schedule of Fees

<i>Fee</i>	<i>Statutory Authority</i>	<i>Amount</i>
General Contractor License Fee	34-8-2(a)	\$300
General Contractor Renewal Fee	34-8-2(a)	\$200
Sub Contractor License Fee	34-8-7(c)(1)	\$150
Sub Contractor Renewal Fee	34-8-7(c)(1)	\$100
Late Renewal Penalty	34-8-2(a)	\$50
Administrative Fine for Violations	34-8-4(a)	\$500 to \$5,000
Suit for Injunction Fine	34-8-6(c)	Up to \$5,000 plus attorney fees for each offense
Copy Fee	36-12-41	\$1 per copy
Annual Subscription (received by mail) of Proposed Action on Rules	36-12-41	\$50

Distribution to Institutions of Higher Education

The *Code of Alabama 1975*, Section 34-8-28(a) requires that one hundred dollars (\$100) from each fee for application and renewal of contractor license and fifty dollars (\$50) from each fee for application and renewal of subcontractor license is to be distributed by the board at the end of each fiscal year to:

- (1) All accredited public institutions of higher education offering American Council for Construction Education accredited courses in building science,
- (2) All accredited public institutions of higher education offering courses in building science which are in the candidate status of American Council for Construction Education, and
- (3) Institutions of higher education offering courses leading to a bachelor of civil engineering degree which offer courses in highway engineering and construction at the undergraduate and graduate level and whose civil engineering program is accredited by the Engineering Accreditation Commission of the Accreditation Board for Engineering and Technology (ABET).

The funds are distributed on a pro-rata share among the institutions, based upon the number of students enrolled in the programs.

Section 34-8-28(b) provides that revenue derived from the additional fees for all licenses shall be distributed for (1) building science (general construction) purposes and (2) civil engineering (highway engineering or construction, or both) purposes. Contractors are given an opportunity to select which program they want to support.

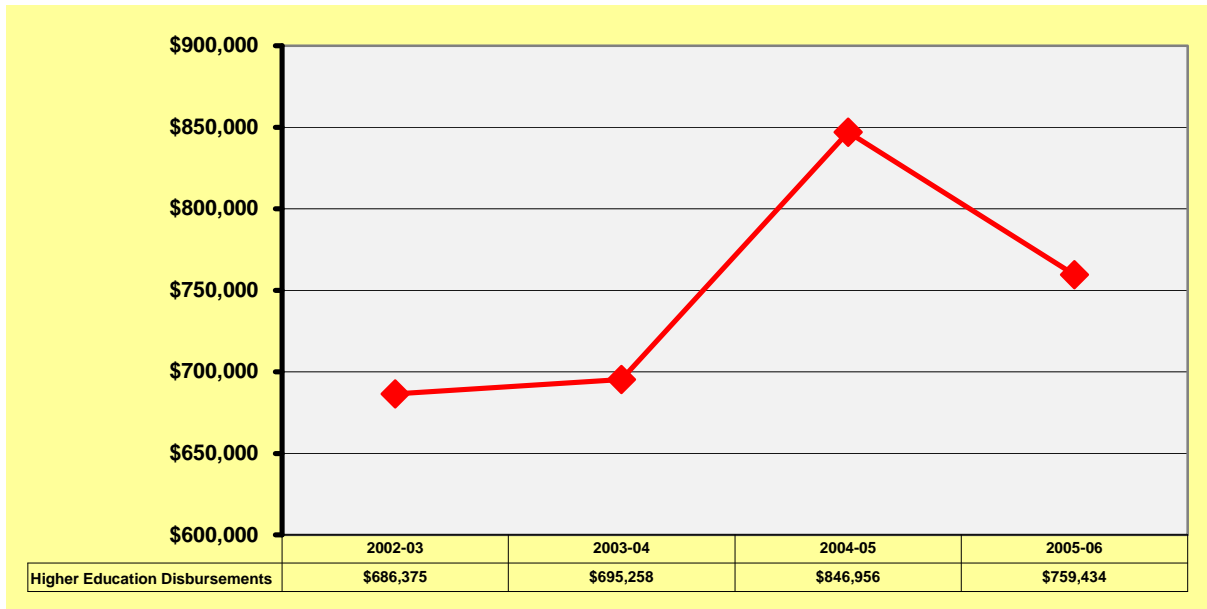
Section 34-8-28(g) allows the board to retain 5% of the application and renewal fees for the administrative expenses of distributing the funds.

Fee	Retained by Board For Administrative Fee (5%) Section 34-8-28(g)	Distributed to Higher Education	
		Specific Disbursement Section 34-8-28(a)	Additional Disbursement Section 34-8-28(b)
General Contractor Application (\$300)	\$15	\$100	\$185
General Contractor Renewal (\$200)	\$15	\$100	\$85
Subcontractor Application (\$150)	\$7.50	\$50	\$92.50
Subcontractor Renewal (\$100)	\$5.00	\$50	\$45

The board made distributions to the following colleges and universities, based upon preferences stated by the individual licensees from whom the fees were collected, either for building science or civil engineering schools:

FY 2005-06 Colleges and Universities	Building Science	Civil Engineering	Combined Totals
Jefferson State Community College	\$ 22,726.20	\$ 0.00	\$ 22,726.20
Auburn University	121,522.88	432,010.49	553,533.37
University of AL, Birmingham		47,303.55	47,303.55
University of AL, Huntsville		27,128.46	27,128.46
University of AL, Tuscaloosa - Scholarship Fund		75,223.39	75,223.39
University of South Alabama		33,518.80	33,518.80
Totals	\$144,249.08	\$615,184.69	\$759,433.77

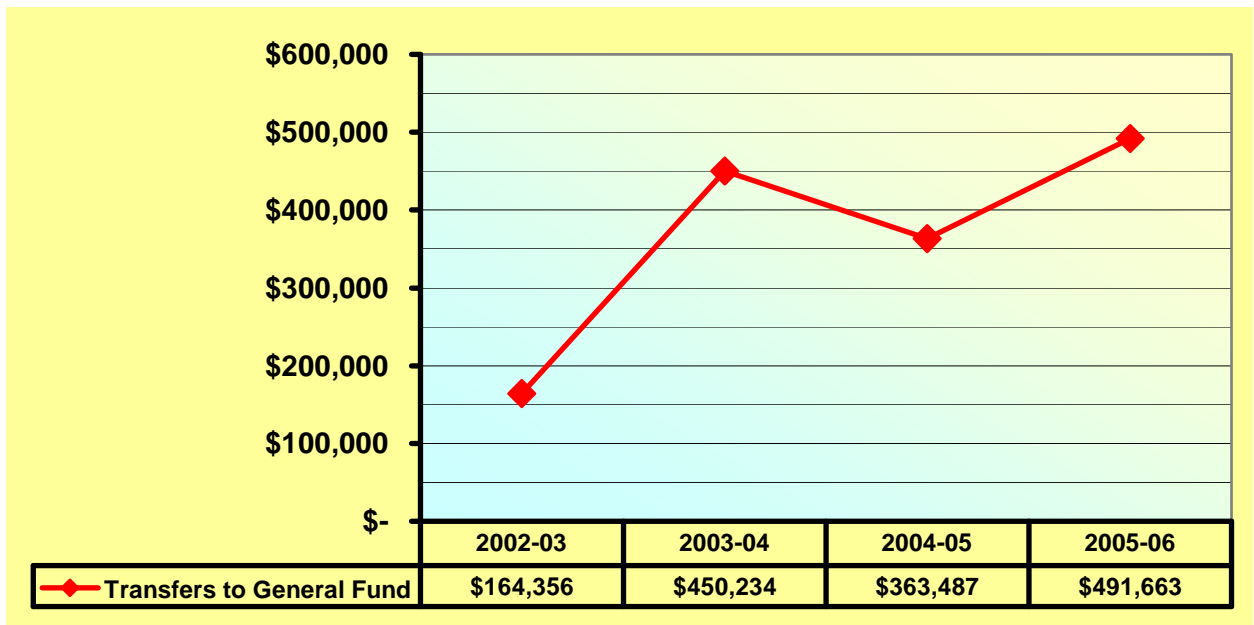
Distributions to Higher Education (Chart)



Transfers to General Fund

The *Code of Alabama 1975*, Section 34-8-22 requires the board to transfer to the state's General Fund all year-end balances in its fund that exceed \$30,000.

Transfers to General Fund (Chart)



Schedule of Receipts, Disbursements, and Balances
October 1, 2002 through September 30, 2006

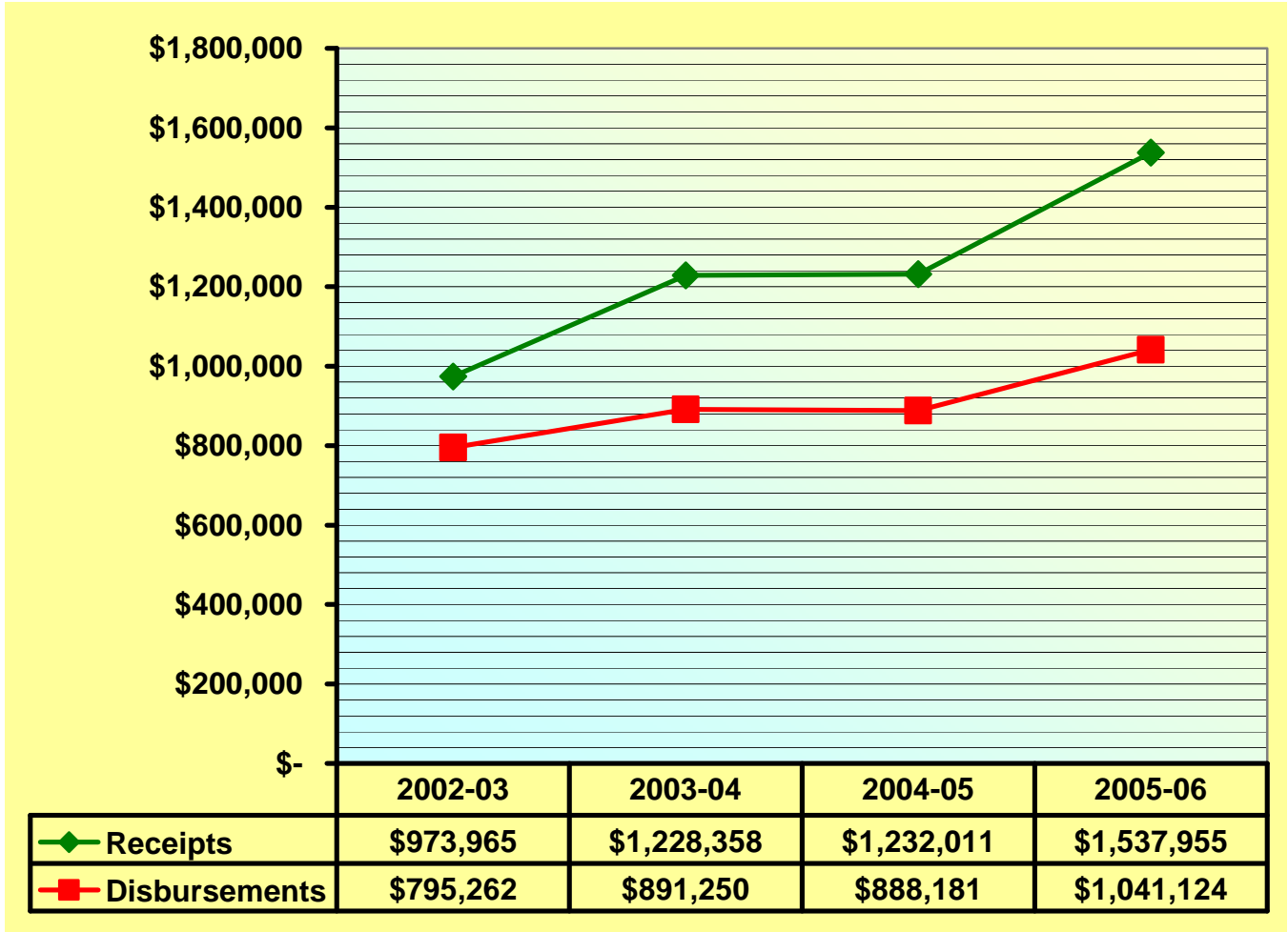
	<u>2005-06</u>	<u>2004-05</u>	<u>2003-04</u>	<u>2002-03</u>
<u>Receipts</u>				
Contractor's License Fees	\$901,158.50	\$948,708.85	\$1,010,186.19	\$866,031.50
Contractor's Additional Fees (1)	764,958.50	799,404.00	891,532.50	731,850.00
Legal Violation Fees	636,500.00	280,000.00	214,500.00	107,250.00
Miscellaneous	296.33	3,302.12	3,671.66	683.53
Total Receipts	<u>2,302,913.33</u>	<u>2,031,414.97</u>	<u>2,119,890.35</u>	<u>1,705,815.03</u>
<u>Disbursements</u>				
Personnel Costs	531,477.64	445,208.60	423,236.63	370,145.29
Employee Benefits	207,889.17	168,519.66	134,888.24	111,069.51
Travel-In-State	12,398.56	7,721.67	7,054.97	6,426.43
Travel- Out-of-State	6,700.31	987.30	2,195.00	-
Repairs and Maintenance	1,311.39	2,542.60	18,878.59	980.00
Rentals and Leases	80,945.04	80,505.31	102,471.02	104,712.23
Utilities and Communications	45,902.46	40,772.44	38,781.55	41,734.59
Professional Services	70,655.92	52,424.50	52,408.28	106,027.86
Supplies, Materials & Operating Expenses	60,631.87	54,346.65	39,055.07	47,104.35
Transportation Equipment Operations	18,219.68	12,751.86	7,702.59	7,062.06
Transportation Equipment Purchases	-	-	44,427.00	-
Other Equipment Purchases	4,991.72	22,400.06	20,151.20	-
Transfer to General Fund (2)	363,487.25	450,234.37	164,355.55	138,855.36
Distributions to Institutions of Higher Ed (1)	759,433.77	846,956.14	695,257.50	686,375.00
Total Disbursements	<u>2,164,044.78</u>	<u>2,185,371.16</u>	<u>1,750,863.19</u>	<u>1,620,492.68</u>
Excess (Deficiency) of Receipts Over Disbursements	138,868.55	(153,956.19)	369,027.16	85,322.35
Cash Balance at Beginning of Year	1,248,337.10	1,402,293.29	1,033,266.13	947,943.78
Cash Balance at End of Year	1,387,205.65	1,248,337.10	1,402,293.29	1,033,266.13
Reserved for Year-end Obligations	(138,832.48)	(95,416.08)	(74,913.03)	(143,652.83)
Reserved for Institutions of Higher Ed (1)	(726,710.56)	(759,433.77)	(847,145.89)	(695,257.75)
Reserved for Transfer to General Fund (2)	(491,662.61)	(363,487.25)	(450,234.37)	(164,355.55)
Unobligated Cash Balance (2)	<u>\$30,000.00</u>	<u>\$30,000.00</u>	<u>\$30,000.00</u>	<u>\$30,000.00</u>

(1) The **Code of Alabama 1975**, Section 34-8-28 requires the board to collect \$100 from the fees required for application and renewal of general contractors and \$50 from the fees required for application and renewal of subcontractors. The board is allowed to retain 5% for administrative costs and must distribute the remainder to certain institutions of higher education offering civil engineering or building science courses that meet the accreditation requirements specified by law at the end of the fiscal year.

(2) The **Code of Alabama 1975**, Section 34-8-25 requires transfer to the General Fund of any funds remaining in the State Treasury to the credit of the board at the end of the year, except that the board may retain \$30,000 to meet emergencies.

Operating Receipts Vs Operating Disbursements (Chart)

October 1, 2002 through September 30, 2006



QUESTIONNAIRES

Board Member Questionnaire

Questionnaires were mailed to all five board members. Five responded.

Question #1

What are the most significant issues currently facing the Licensing Board for General Contractors and how is the board addressing these issues?

1. "Continuing substantial number of general contractors – sub-contractors violations".
"We are focused on educating the various municipalities on the licensing laws, i.e., mail outs of personal contacts by our investigators."
2. "Educations regarding licenses law requirements."
3. "Clarify the rules governing license limits." *"Working with the Examiners and Legislative Representatives to simplify the rules for sub-contractors."*
4. "Identifying ambiguities in the rules and regulations for chapter 8 of title 34 of the **Code of Alabama, 1975.**" *"The Board uses all resources available to identify and resolve issues that arise with regard to the ambiguities in the law as they apply to our licenses. Also we need to increase the amount of the unobligated funds at year end to an amount equal to one third of our operating expense for the year. This would safeguard any interruption that might occur in our income stream and allow for a positive balance until funds are received."*
5. "Adjusting our laws timely."

Question #2

What changes to the Licensing Board for General Contractors' laws are needed?

1. "Increase the \$30,000.00 amount we are allowed to carry over at fiscal year end."
2. "Sub-contractors do not need to be licensed."
3. "Increase retained funds. Simplify the rules for sub-contractors. This is proving to be a real reg. burden for our industry with little of no benefit."
4. "The same as stated in # 1."
5. "We should eliminate the sub-contractor license making everyone a general contractor. Raise the threshold to \$200,000.00. Start trades testing."

Question #3

Is the Licensing Board for General Contractors adequately funded?

5 Yes 0 No 0 No Response

1. "Yes, after the past three or four months, after the fiscal year, when the renewal stream is high enough from fines, violations or renewals."

Question #4

Is the Licensing Board for General Contractors adequately staffed?

5 Yes 0 No 0 Unknown

Question #5

What is the purpose of your board's fiscal year end balance of unobligated funds?

1. "Operating capital."
2. "Operations reserve."
3. "Funding operations."
4. "Operating revenue for the next preceding quarter until revenues are received from renewing licenses. The amount needs to be increased as mentioned in question number one. The remaining balance should be increased to an amount of one third of the operating expense."
5. "Colleges and the general fund."

Licensee Questionnaire – General Contractors

Licensee Questionnaire General Contractor

Questionnaires were mailed to one hundred licensed general contractors. Fifty-six responded.

Question #1

Do you think regulation of your profession by the Licensing Board for General Contractors is necessary to protect public welfare?

49 Yes 4 No 3 Unknown 0 No Opinion

Question #2

Do you think any of the Licensing Board for General Contractors' laws, rules, and policies are an unnecessary restriction on the practice of your profession?

10 Yes 39 No 3 Unknown 4 No Opinion

Question #3

Do you think any of the Licensing Board for General Contractor's requirements are irrelevant to the competent practice of your profession?

12 Yes 35 No 4 Unknown 5 No Opinion

Question #4

Are you adequately informed by the Licensing Board for General Contractors of changes to and interpretations of board positions, policies, rules and laws?

26 Yes 17 No 10 Unknown 3 No Opinion

Question #5

Has the Licensing Board for General Contractors performed your licensing and/or renewal in a timely manner?

52 Yes 1 No 3 No Opinion

Question #6

What do you think is the most significant issue(s) currently facing your profession in Alabama and what is the Licensing Board for General Contractors doing to address the issue(s)?

1. "Not verifying licenses on all contractors. Should provide more investigators to enforce licensing."
2. "My company sprays herbicides on power line right of ways. We are regulated by the Department of Agriculture and Industries. A poorly worded regulation forces some of our customers to require license. We do not do any construction work. The law should be clarified."
3. "Local inspection department. Putting small guys out."
4. "I have not tried contacting them lately, but the last time I did, it was impossible."
5. "No one checking on contractors. Not licensed except in larger cities and some counties. Don't have the answer either!"
6. "Government rules and regulations and paperwork, taxes, etc."
7. "Issue—paperwork for Hispanic workers. To address the requirement for National Worker I.D. cards."
8. "Labor."
9. "I think the Board should help us stress the important fact to people to use reputable licensed contractors. I also think the Board should stress and verify adequate insurance for contractors."
10. "Qualified and skilled labor pool."
11. "Work performed by unlicensed companies is a small concern."
12. "Competent and qualified work force."
13. "Contractors not properly licensed."
14. "Skilled labor shortage." *"ALBGC I am not aware of anything being done to address this issue."*
15. "General Liability Insurance." *"Unknown."*
16. "If I have to compete with home owners, they should be licensed to."
17. "Need written testing, not business financials."
18. "Unlicensed contractors building hotels." *"Actions unknown."*
19. "Not doing a good enough job letting the public know about law violations for accepting bids, and contracting with improperly licensed competitors."
20. "Qualified labor." *"Unknown."*
21. "Out of state licensing. The State of Alabama Licensing Board should require the same rules and regulations as other states which have contractors coming from the state they are from. Contractors in Florida should meet the same requirement in Alabama as they had in Florida in order to get a license here. In other words, what I'm trying to say is, whatever a contractor must go through to get a license in another state, Alabama should require the same rules to that state."
22. "The fact that building code requirements are not enforced on some jobs allowing sub-standard contractors to under bid reputable contractors."
23. "Compete against un-licensed contractors." *"I don't know what the board is doing."*
24. "Insurance problems – general liability, workman's compensation." *"Unknown."*
25. "Unqualified people entering the building industry."

Question #7

Do you think the Licensing Board for General Contractors and its staff are satisfactorily performing their duties?

38 Yes 3 No 9 Unknown 6 No Opinion

Question #8

Has any member of the Licensing Board for General Contractors or its staff asked for money (other than normal fees), services, or any other thing of value in return for performing a board service for you?

2 Yes 54 No Unknown No Opinion

Licensee Questionnaire – Subcontractors

Questionnaires were mailed to one hundred licensed sub-contractors. Fifty-two responded.

Question #1

Do you think regulation of your profession by the Licensing Board for General Contractors is necessary to protect public welfare?

40 Yes 9 No 3 Unknown 0 No Opinion

Question #2

Do you think any of the Licensing Board for General Contractor's laws, rules, and policies are an unnecessary restriction on the practice of your profession?

8 Yes 35 No 7 Unknown 2 No Opinion

1. "We should be able to send a company check for payment of the license instead of having to go to the bank for cashier check. Our company checks are legal tender in this state for payment of debt for every thing from material to taxes. Why is this form of payment not acceptable for the licensing board?"

Question #3

Do you think any of the Licensing Board for General Contractor's requirements are irrelevant to the competent practice of your profession?

9 Yes 35 No 7 Unknown 1 No Opinion

Question #4

Are you adequately informed by the Licensing Board for General Contractors of changes to and interpretations of board positions, policies, rules and laws?

17 Yes 21 No 11 Unknown 3 No Opinion

Question #5

Has the Licensing Board for General Contractors performed your licensing and/or renewal in a timely manner?

51 Yes 0 No 1 No Opinion

Question #6

What do you think is the most significant issue(s) currently facing your profession in Alabama and what is the Licensing Board for General Contractors doing to address the issue(s)?

1. "No limits on low quotes."
2. "All counties do not require electricians to have state license. This is wrong and not fair."
3. "We need to stop construction management in this state; money is being handed to general contractors unnecessarily, mainly by school projects. Even our city is doing the same. 'Picking subs, showing favors.'"
4. "General contractors should not be able to carry unlicensed contractors (sub-contractors) on their licenses or insurance."
5. "Unlicensed company doing work and not getting checked."
6. "Unqualified contractors performing larger jobs." *"License requirements for \$50K certainly help."*
7. "A plumber and mechanic apprentice program."
8. "Illegal aliens being hired either directly by general contractors or indirectly by allowing sub-contractors to use illegals." *"The Board is doing nothing to address this issue."*
9. "Insuring qualified contractors are on the job." *"Don't know."*
10. "Very long delays in being paid for work performed (sometimes 5 months behind)."
11. "The need for insurance for small contractors is too expensive and over rated. Quality help is hard to find." *"Don't know."*
12. "Making sure all subs have the license." *"Not sure."*
13. "We need uniform codes; every municipality uses different codes or rules."
14. "Lack of qualified installers."
15. "Illegal immigrant workers." *"This is probably not under the Licensing Board's jurisdiction."*
16. "Our profession is facing the lack of qualified people. There are very few younger people entering our profession. More should be done to identify these people who would be willing to enter our profession and educate them."
17. "State to state licensing acceptance. Why some will and some won't. There should be no problems." *"I do not know what work is being done to take care of this."*
18. "We are a sub in Georgia — we hold this license for the possibility of work in Alabama or due to a previous project a few years back."
19. "Non-licensed contractors." *"Trying to catch them."*
20. "Unlicensed contractors — need more inspectors."
21. "Don't keep sub-contractors up to date on issues related to them."
22. "Availability of qualified skilled labor."

*Licensee Questionnaire
Subcontractors*

23. "Unlicensed foreigners coming to the state, doing shabby work at a cheap price, forcing many of us out of work."
24. "Unlicensed contractor. Uninsured contractor."
25. "Many installation crews and contractors still install flooring without license."

Question #7

Do you think the Licensing Board for General Contractors and its staff are satisfactorily performing their duties?

 29 Yes 3 No 17 Unknown 3 No Opinion

1. "Their hands are tied."
2. "I was checked by your department because officials at XXXXXXXXXXXXX. My contractor was threatened of fines, but after investigating, found out I was legal."

Question #8

Has any member of the Licensing Board for General Contractors or its staff asked for money (other than normal fees), services, or any other thing of value in return for performing a board service for you?

 1 Yes 51 No 0 Unknown 0 No Opinion

APPENDICES

Smart Budgeting Reports

State of Alabama EBO Form No. 4b		AGENCY NAME: Licensing Board for General Contractors FY 2006 SMART OPERATIONS PLAN			Agency No. 324 Page 1 of 1	
			ACTUAL FY04	BUDGET FY05	BUDGET FY06	
MISSION	To safeguard life, health, and property and to promote the general public welfare by requiring that only properly qualified persons be permitted to engage in general contracting.					
VISION (Optional)	To be an agency that protects the public against incompetent contractors and to better assure properly built structures which are free from defects and dangers to the public.					
VALUES (Optional)	Integrity, accomplishing goals in a timely manner, and effective communication.					
CRITICAL ISSUES (Optional)						
Internal	Additional staffing to meet our goals.					
External	Carry over funding is not adequate to operate normal functions of the Board.					
PROGRAM ACTIVITY	Licensing Board for General Contractors (\$ in millions)					
	(\$ in millions)					
MISSION	To insure that only properly qualified person be permitted to engage in general contracting.					
GOAL(S)	To insure that only qualified contractors enter the profession. To maintain essential information on all commercial contractors practicing in Alabama. To resolve all complaints in a timely manner with satisfactory results. To collect violation fees from those contractors who do not adhere to Board regulations.					
WORKLOAD	Number of applications will remain the same (No. applications) 904 904 904 Collection amounts of violations will remain the same (Dollar amount of Violations) 110,000 110,000 110,000 Number of renewal applications will remain the same (No. of renewal applications) 6,848 6,848 6,848					
CRITICAL ISSUES						
Internal	Must make the renewal process more accessible to contractors.					
External	Must make contractors aware of rules and procedures.					
OBJECTIVES						
Spending	Increase administrative spending by no more than 3% (\$ in millions) 1,705 1,707 1,535					
Staffing	Reduce the staffing in enforcement and renewal division (FTE) 20 28 22					
Efficiency	Reduce the administrative time required to process renewal applications (applications/hrs.) 1.5% 1.3% 1.0%					
Quality	Reduce the number of telephone inquiries about the renewal process (calls received per day) 150 50 25 Reduce the area of each enforcement officer (State wide coverage) 1/2 State 1/3 State 1/3 State					
STRATEGIES	Create a web-based process for renewal, allowing the payment of renewal fees by credit card. Create enhanced method for reporting financial statements for the renewal procedure. To make the renewal process more efficient.					

Smart Quarterly Performance Report Fiscal Year: 2006											
Agency: 324 Contractors, State Licensing Board for General											
Org:											
Program: 653 PRO AND OCCU LICENSING AND REG											
Activity: 0472 LIC & REG OF GEN CONTRACTORS											
Performance Measures		First Quarter		Second Quarter		Third Quarter		Fourth Quarter		Annual	
Workload/Cost Factor	Performance Indicator	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual
WC1: Number of Applications will remain the same.	No. of applications	134	340	220	312	250	354	300	311	904	1,317
WC2: Collection amounts on violations will remain the same.	(\$)	30,000	162,000	35,000	126,000	25,000	181,000	20,000	167,500	110,000	636,500
WC3: Number of renewal applications will remain the same.	No. of applications	2,033	1,893	1,270	864	2,100	2,693	1,445	2,129	6,848	7,579
Spending	Performance Indicator	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual
SP1: Increase administrative spending by no more than 3%	(\$)	381,171	250,933	340,579	241,112	436,269	287,249	376,981	284,966	1,535,000	1,064,260
Staffing	Performance Indicator	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual
ST1: Reduce the staffing in enforcement and renewal division	(FTE)	18	16	18	17	0	17	18	17	18	18
Efficiency	Performance Indicator	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual
EF1: Reduce the administrative time required to process renewal applications.	(Applications divided by hrs)	0	0	0	0	0	0	0	0	0.01	0.01
Quality	Performance Indicator	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual
QU1: Reduce the number of telephone inquiries about the renewal process	(calls received per day)	25	22	25	33	25	28	25	33	25	29
QU2: Reduce the area of each enforcement officer	(State wide coverage)	1/3 State	1/3 State	1/3 State	1/3 State	0	0	0	1/3 state	0	1/3 state

How have policy decisions and budget determinations made by the governor and the legislature in the fiscal year 2005-06 affected your agency in meeting its desired accomplishments and services? Not Applicable Yet

What administrative improvements did your agency make in fiscal year 2005-06 and what potential improvements do you foresee for future years? Include suggested changes in legislation or administrative procedures which would aid your agency in these improvements. Not Applicable Yet

2007 SMART Operations Plan

Agency/ Org	324 - Contractors, State Licensing Board for General
Organization	-
Program	653 - PRO AND OCCU LICENSING AND REG
Activity	-

Mission	To safeguard life, health, and property and to promote the general public welfare by requiring that only properly qualified persons be permitted to engage in general contracting.
Vision	To be an agency that protects the public against incompetent contractors and to better assure properly built structures which are free from defects and dangers to the public.
Values	We value integrity, protecting the public against unqualified commercial and industrial general contractors, and the effective communication between our staff and general contractors.

Goals

- G1: To ensure that only qualified commercial and industrial contractors enter the profession. (GP-7)
G2: To ensure the timely processing and licensing of new and renewal applications. (GP-7)
G3: To enforce laws and regulations to identify contractors who do not adhere to the board regulations. (GP-7)

Critical Issues

Internal ICI1: The need for additional staffing to accomplish our goals. ()

External EC11: Carry over funding is not adequate to operate the normal functions of the board. ()

Strategies

- 1). Ask Legislature to address our lack of carry over funding. ()
2). To maintain staffing allowing us to complete our goals. ()

Workloads							Performance Indicator	
Number of licenses issued and renewed during the fiscal year.							# of licenses	
FY 07 Projected: 7,533							FY 07 Target: 8,722	
FY07 Quarterly Projections:	1 st Qtr:	2440	2nd Qtr:	1190	3 rd Qtr:	3084	4 th Qtr:	2008
Violations collected							\$ amount of violations	
FY 07 Projected: 150,000							FY 07 Target: 150,000	
FY07 Quarterly Projections:	1 st Qtr:	25000	2nd Qtr:	27850	3 rd Qtr:	67150	4 th Qtr:	30000

Objectives							Performance Indicator	
Spending	To increase spending by no more than 10%						\$ of expenditures	
FY 07 Projected: 1,682,000			FY 07 Target: 1,682,000					
FY07 Quarterly Projections:	1 st Qtr:	430661	2nd Qtr:	356425	3 rd Qtr:	416775	4 th Qtr:	478139
Staffing	To maintain staffing to meet our goals.						# of employees	

2007 SMART Operations Plan

FY 07 Projected: 21		FY 07 Target: 21					
FY07 Quarterly Projections:	1 st Qtr:	21	2nd Qtr:	21	3 rd Qtr:	21	4 th Qtr: 21
Efficiency		To reduce the turn around time on renewal applications.					# of completed renewals
FY 07 Projected: 7,533		FY 07 Target: 7,533					
FY07 Quarterly Projections:	1 st Qtr:	2106	2nd Qtr:	880	3 rd Qtr:	2759	4 th Qtr: 1788
Quality		To better enforce board regulations					\$ of Violations
FY 07 Projected: 150,000		FY 07 Target: 150,000					
FY07 Quarterly Projections:	1 st Qtr:	25000	2nd Qtr:	27850	3 rd Qtr:	67150	4 th Qtr: 30000

2007 SMART Operations Plan

Source of Funds			
Fund Code	Fund Name	Requested FY 07	Budgeted FY 07
0368	Licensing Board for General Contractors	\$1,682,000	\$1,682,000
Total of all Funds Listed Above:		\$1,682,000	\$1,682,000

2007 Legislation (HB784)

HB784

91692-1

By Representatives Sanderford and McDaniel

RFD: Government Appropriations

First Read: 01-MAY-07

91692-1:g:04/26/2007:JRC/th LRS2007-2468

SYNOPSIS: Under existing law, at the end of the fiscal year the Secretary-Treasurer of the State Licensing Board for General Contractors remits any remaining funds to the State General Fund, but has the right to retain \$30,000 to meet any emergency that may arise. This bill would allow the Secretary-Treasurer of the State Licensing Board for General Contractors to retain 33 percent of its budget for emergency purposes.

A BILL TO BE ENTITLED AN ACT

To amend Section 34-8-25, Code of Alabama 1975, relating to the reversion of excess funds to the State General Fund, to allow the Secretary-Treasurer of the State Licensing Board for General Contractors to retain 33 percent of its budget for emergency purposes.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 34-8-25, Code of Alabama 1975, is amended to read as follows:

"§34-8-25.

"The secretary-treasurer shall keep a record of the proceedings of said board, shall receive and account for all the moneys derived from the operation of this chapter and shall deposit, or cause to be deposited, all such moneys in the State Treasury to the credit of the State Licensing Board for General Contractors; and said funds shall be subject to withdrawal only upon warrant of the state Comptroller to be issued upon certificate or voucher certified by the secretary-treasurer of the board. Any funds remaining in the State Treasury to the credit of the State Licensing Board for General Contractors at the end of each year shall be paid into the General Fund of the state on or before January 15 in each succeeding year. The board has the right, however, at all times to retain a sum not in excess of ~~\$30,000.00~~ 33 percent of its budget for the previous year to meet any emergency that may arise which may affect its efficient operation."

Section 2. This act shall become effective on the first day of the third month following its passage and approval by the Governor, or its otherwise becoming law.

Statutory Authority

CHAPTER 8. CONTRACTORS.

REFERENCES

CROSS REFERENCES

As to provisions which require timely payments to contractors and subcontractors, see Chapter 29 of Title 8.

ADMINISTRATIVE CODE

2 Ala. Admin. Code 170-X-5-.01 et seq., Building Commission; Bidding and Awarding Contracts for Projects Supervised and Administered by the Commission.

4 Ala. Admin. Code 230-X-1-.01 et seq., Licensing Board for General Contractors.

ARTICLE 1. GENERAL PROVISIONS.

ANNOTATIONS

CASENOTES

Generally 1 enter p

Enforcement of contract for services 3 enter p

Purpose 2 enter p

1. Generally

This chapter, regulating the licensing of general contractors, is a police measure, expressing public policy and not merely for revenue purposes. *Cooper v. Johnston*, 283 Ala. 565, 219 So.2d 392 (Ala.1969).

The regulatory provisions which provide for licensing general contractors and their employment are broad and comprehensive. *Cooper v. Johnston*, 283 Ala. 565, 219 So.2d 392 (Ala.1969).

2. Purpose

It was the intention of the legislature that this chapter be enacted for regulation and protection as distinguished from a law created solely for revenue purposes. *Cooper v. Johnston*, 283 Ala. 565, 219 So.2d 392 (1969); *Hawkins v. League*, 398 So.2d 232 (Ala.1981).

Primary purpose of chapter is to protect the public against incompetent contractors for certain type structures and also to better assure properly constructed structures which are free from defects and dangers to the public. *Cooper v. Johnston*, 283 Ala. 565, 219 So.2d 392 (1969); *Hawkins v. League*, 398 So.2d 232 (Ala.1981).

This chapter is not a law enacted solely for revenue purposes, but rather is regulatory legislation designed to protect the public against incompetent contractors and to assure properly built structures which are free from defects and dangers to the public.

Architectural Graphics and Const. Services, Inc. v. Pitman, 417 So.2d 574 (Ala.1982).


Regulatory provisions which provide for licensing general contractors and their employment show a legislative intent to restrict to certain qualified persons, firms or corporations the erection of structures which cost \$20,000.00 or more. *Cooper v. Johnston*, 283 Ala. 565, 219 So.2d 392 (Ala.1969).

3. Enforcement of contract for services

Express or implied contracts entered into by an unlicensed general contractor are null and void because they violate public policy. Moreover, such contracts are illegal and unenforceable by the unlicensed general contractor. *Goodwin v. Morris*, 428 So.2d 78 (Ala.Civ.App.1983). Licenses 39.43(1)

A contract by an unlicensed "general contractor," as defined in § 34-8-1, is null and void as a violation of public policy. Such contracts are illegal and unenforceable by the unlicensed general contractor. *Architectural Graphics and Const. Services, Inc. v. Pitman*, 417 So.2d 574 (Ala.1982).

Although this article provides a misdemeanor penalty for noncompliance, express or implied contracts under this article with nonlicensed general contractors are null and void as a violation of public policy. Such contracts are illegal and unenforceable by the unlicensed general contractor. *Hawkins v. League*, 398 So.2d 232 (Ala.1981).

If the purpose of a licensing statute is the regulation of the business licensed and not merely the collection of revenue, a person not licensed cannot enforce a contract for services rendered within the scope of the regulated business. *Tucker v. Walker*, 293 Ala. 589, 308 So.2d 245 (Ala.1975). Licenses  38.7

In order for contracting party to be entitled to summary judgment, it must be shown that: (1) general contractor was unlicensed, (2) the contracted work was of the type covered by the statute and (3) the "cost" of the work was \$20,000.00 or more. *Tucker v. Walker*, 293 Ala. 589, 308 So.2d 245 (Ala.1975).

Cited in *Southern Metal Treating Co. v. Goodner*, 271 Ala. 510, 125 So.2d 268 (1960); *Hathcock v. Mitchell*, 277 Ala. 586, 173 So.2d 576 (1965); *Tucker v. Trussville Convalescent Home, Inc.*, 289 Ala. 366, 267 So.2d 438 (1972); *West Alabama Remodeling, Inc. v. Ireland*, 412 So.2d 766 (Ala.1982); *Hutcheson v. United States*, 540 F.Supp. 880, 82-1 U.S. Tax Cas. (CCH) ¶ 9304, 49 A.F.T.R.2d (P-H) ¶ 82-1151 (M.D.Ala.1982); *Herbert v. Birmingham-Jefferson Civic Center Authority*, 694 F.2d 240 (11th Cir. Ala.1982).

§ 34-8-1. "General contractor" defined; "Subcontractor" defined. [Historical Notes](#) [References](#) [Annotations](#)

(a) For the purpose of this chapter, a "general contractor" is defined to be one who, for a fixed price, commission, fee, or wage undertakes to construct or superintend or engage in the construction, alteration, maintenance, repair, rehabilitation, remediation, reclamation, or demolition of any building, highway, sewer, structure, site work, grading, paving or project or any improvement in the State of Alabama where the cost of the

undertaking is fifty thousand dollars (\$50,000) or more, shall be deemed and held to have engaged in the business of general contracting in the State of Alabama.

(b) For the purpose of this chapter, a "general contractor" is defined to include one who, for a fixed price, commission, fee, or wage exceeding five thousand dollars (\$5,000), undertakes to construct, superintend the construction of, repair, or renovate, any swimming pool, and anyone who shall engage in the construction, superintending of the construction, repair, or renovation of any swimming pool in the State of Alabama, where the cost of the undertaking exceeds five thousand dollars (\$5,000), shall be deemed and held to have engaged in the business of general contracting in the State of Alabama and shall be subject to this chapter.

(c) For the purpose of this chapter a "subcontractor" is defined to be one who performs work under contract to a general contractor as defined in subsection (a). (Acts 1935, No. 297, p. 721, § 1; Code 1940, T. 46, § 65; Acts 1959, No. 571, p. 1429, § 1; Acts 1989, No. 89-648, p. 1278, § 1; Acts 1996, No. 96-640, p. 1013, § 1; Acts 1997, No. 97-270, p. 486, § 1; Act 2003-142, p. 441, § 3.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 1996 amendment, effective May 17, 1996, in subsection (a), inserted "or engage in", inserted ", alteration, maintenance, repair, rehabilitation, remediation, reclamation, or demolition", inserted "structure, site, work,", inserted ", paving or project", deleted "or structure" following "any improvement", inserted "in the State of Alabama" preceding "where the cost", and deleted "and anyone who shall engage in the construction or superintending the construction of any structure or any undertaking or improvements above mentioned in the State of Alabama, costing \$20,000.00 or more," preceding "shall be deemed"; and made nonsubstantive changes.

The 1997 amendment, effective January 1, 1998, in subsection (a) substituted "fifty thousand dollars (\$50,000)" for "twenty thousand dollars (\$20,000)"; added subsection (c); and made nonsubstantive changes.

The 2003 amendment, effective June 13, 2003, in subsection (c) substituted "one" for "a 'general contractor' as defined in subsection (a),", substituted "a general" for "another general", and inserted "as defined in subsection (a)".

REFERENCES

RESEARCH REFERENCES

Treatises and Practice Aids

Alabama Law of Damages § 17:18, Contractors.

Alabama Personal Injury and Torts § 1:6, Duty -- Imposed by Statute -- Negligence Per Se.

Alabama Personal Injury and Torts § 8:44, Contractors.

Bruner and O'Connor on Construction Law § 16:11, Licensing the Construction Professional.

ANNOTATIONS

CASENOTES

Generally 1 enter p
"Contractor" 4 enter p
"Cost" 5 enter p
Effect of lack of license 3 enter p
"Improvement or structure" 6 enter p
Relationship to other laws 2 enter p

1. Generally

In order to demonstrate entitlement to a judgment as a matter of law on a nonlicensure defense, a party must prove with respect to an alleged general contractor: (1) that the alleged contractor was unlicensed; (2) that the contracted work was of the type covered by the licensure statute; and (3) that the cost of the work was, under that version of statute, \$20,000 or more. *Central Alabama Home Health Services, Inc. v. Eubank*, 790 So.2d 258 (Ala.Civ.App.2000), rehearing denied. Licenses ☒ 39.43(2)

Requirements of licensing provisions of this section are penal in nature and express a firm public policy of this state to guard our citizens against incompetent contractors for certain type structures, and also to better assure properly constructed structures which are free from defects and dangers to the public. *Brown v. Mountain Lakes Resort, Inc.*, 521 So.2d 24 (Ala.1988).

2. Relationship to other laws

Considering the fact that the requirements of the this section are penal in nature, reflecting a strong public policy as recognized by the legislature in favor of the public at large, the court found that the illegality was placed in issue by the defendant's general denial which itself put into question the validity of the contract. Surely such contracts can find no sanction, and thus be enforceable, simply because of a failure to plead them specially, when their validity is attacked by a plea of general denial. To hold otherwise would subvert a strong public policy intended to protect our citizens by a procedural rule. We cannot interpret A.R.C.P., Rule 8(c) in such a manner as to create an injustice to one of the public for whom the protection of the statute was created. *Brown v. Mountain Lakes Resort, Inc.*, 521 So.2d 24 (Ala.1988).

3. Effect of lack of license

If any person performs work as a general contractor and fails to obtain a general contractor's license, the contract must be declared null, void, and unenforceable. *Herbert v. Birmingham-Jefferson Civic Center Authority*, 1982, 694 F.2d 240.

To be entitled to a summary judgment on a defense that an alleged general contractor was not licensed, a party must prove that (1) the alleged contractor was unlicensed; (2) the contracted work was of the type covered by the licensure statute; and (3) the cost of the work was \$50,000 or more. *Triple D Trucking, Inc. v. American Petroleum Equipment and Const., Inc.*, 865 So.2d 1234 (Ala.Civ.App.2003). Licenses ☒ 39.43(1)

General contractor's claims against property owner sounded in contract, not in fraud, and, thus, were barred by contractor's lack of license; contractor did not seek to raise fraud and deceit claims until after property owner discovered that contractor was

unlicensed. *White v. Miller*, 718 So.2d 88 (Ala.Civ.App.1998). Licenses ☒ 39.43(1)

Absence of license at contract formation not bar to later recovery on contract where license's issuance was delayed due to third-party error and contractor continued to perform work for developer, whose president continued to acknowledge, both before and after license was issued, that contractor was entitled to receive payment for this work. *McNairy v. Sugar Creek Resort, Inc.*, 576 So.2d 185 (Ala.1991).

Unlicensed contractors cannot avoid protection of chapter by circumventing requirements. The importance of the regulatory nature of this chapter, and the protection it affords the citizens of Alabama, cannot be avoided by unlicensed contractors who, through creative schemes, seek to circumvent the requirements of this chapter; an unlicensed contractor will not be afforded the privileges that come from the statute because of its association with a licensed contractor, because of its obtaining a license subsequent to the execution of the contract, or because of the equally inequitable conduct of the other contracting party. *J & M Industries, Inc. v. Huguley Oil Co., Inc.*, 546 So.2d 367 (Ala.1989).

The rule denying legal status to contracts by unlicensed general contractors has been applied to deny recovery where the action was based on the contract itself, for work, labor, and materials furnished and in an action to establish a mechanic's lien. *Architectural Graphics and Const. Services, Inc. v. Pitman*, 417 So.2d 574 (Ala.1982).

Where the definition of general contractor under this section is met, expressed or implied contracts with nonlicensed "general contractors" are null and void as a violation of public policy. *Twickenham Station, Inc. v. Beddingfield*, 404 So.2d 43 (Ala.1981).

4. "Contractor"

In determining whether a person has engaged in the type of work covered by the definition of "general contractor" provided by Alabama's statutory licensing scheme, Alabama courts look at many factors, such as the intent of the parties, the amount of control by the person, and the type of work performed by the person. *Allstate Ins. Co. v. Hugh Cole Builder, Inc.*, 127 F.Supp.2d 1235 (M.D.Ala.2001). Licenses ☒ 11(5)

Trucking company that was hired to haul dirt for construction of supermarket was not a "general contractor," did not need a license as a general contractor, and, therefore, could recover payment from site work subcontractor for work and labor; the company was engaged only in the hauling and dumping of dirt for the project, not site work or grading. *Triple D Trucking, Inc. v. American Petroleum Equipment and Const., Inc.*, 865 So.2d 1234 (Ala.Civ.App.2003). Licenses ☒ 11(5)

Cost of builder's undertaking was \$20,000, rather than \$19,610, and thus builder was required to be a licensed general contractor to obtain building permit, even though contract stated that a fee of \$390 for drawing services would be deducted from the \$20,000 cost and paid to architect; builder engaged architect's services and negotiated his fee, builder exercised control over design phase of contract, and builder referred to his agreement as a "design/build" contract. *Thomas Learning Center, Inc. v. McGuirk*, 766 So.2d 161 (Ala.Civ.App.1998), rehearing denied, certiorari quashed. Licenses ☒ 11(5)

A plumber, who as subcontractor agreed to furnish all fixtures and connections thereto for building project, was held not exempt from payment of privilege tax as a "contractor" merely because he held a plumber's license or because building contractor had paid contractor's license, since this chapter requires a license for each business

conducted. *Pate v. State*, 243 Ala. 44, 8 So.2d 516 (Ala.1942). Taxation  3668

5. "Cost"

"Cost" in the definition refers to the amount which the contractor is to receive for his work and not merely the out-of-pocket expenses incurred by the contractor in performing the work. *Tucker v. Walker*, 293 Ala. 589, 308 So.2d 245 (1975); *Hawkins v. League*, 398 So.2d 232 (Ala.1981).

Replacement of worn carpeting cannot be characterized as the construction of an "improvement," the only term in this section under which such work could conceivably fit; thus, the work is not the type of work performed by a general contractor as defined in this section. Therefore, a successful bidder for carpet replacement is not required under § 41-16-50 et seq., to be a licensed general contractor. *McCord Contract Floors, Inc. v. City of Dothan*, 492 So.2d 996 (Ala.1986).

Word "cost" in this section refers to the aggregate amount which the contractor is to receive for his work. *Cochran v. Ozark Country Club, Inc.*, 339 So.2d 1023 (Ala.1976).

Section cannot be circumvented by dividing the work of a single construction project into two separate contracts of less than \$20,000.00 each. *Cochran v. Ozark Country Club, Inc.*, 339 So.2d 1023 (Ala.1976).

6. "Improvement or structure"

One drilling a gas well is not constructing an "improvement or structure," therefore, such contractors do not fall within the "general contractor" definition of this section. *Louisiana Well Service, Inc. v. MetFuel, Inc.*, 614 So.2d 1039 (Ala.1993).

Cited in *Dixie Store Fixtures & Sales Co. v. Supreme Fixture Co.*, 376 So.2d 703 (Ala.1979); *Gorman v. Lowery*, 419 So.2d 255 (Ala.Civ.App.1982); *Utah Foam Products, Inc. v. Polytec, Inc.*, 584 So.2d 1345 (Ala.1991), reh'g denied, without op. (Ala.); *Med Plus Properties v. Colcock Constr. Group*, 628 So.2d 370 (Ala.1993).

§ 34-8-2. Licensure and classification of contractors. [Historical Notes](#) [References](#) [Annotations](#)

(a) Any person desiring to be licensed or desiring a renewal of an existing license as a general contractor in this state shall make and file with the board, not less than 30 days prior to any regular meeting thereof, a written application on a form as prescribed for examination by the board and the application shall be accompanied by three hundred dollars (\$300) for a new application or two hundred dollars (\$200) in case of a renewal. If a licensee fails to renew his or her license within 90 days following expiration of the previous license, a late penalty of fifty dollars (\$50) shall be collected, upon renewal, in addition to the renewal fee. The applicant shall apply for a license covering the type or types of contracts on which he or she wishes to perform, and the board shall classify contractors according to the type or types of contracts on which they may perform, within maximum bid limits, on the following basis: The applicant's request, his or her last annual financial statement prepared by a certified public accountant (C.P.A.) or by any independent licensed public accountant approved by the Licensing Board for General Contractors, his or her previous experience, equipment, and the facts in each case. An

applicant shall not be so classified as to permit him or her to bid on or to perform a type of work not included in his or her request for a license. If the application is satisfactory to the board, then the applicant may be required to take an examination to determine his or her qualifications. If the result of the examination of the applicant is satisfactory to the board, the board shall then issue to the applicant a certificate to engage in general contracting in the State of Alabama, stipulating in each license issued the type or types of work the contractor is permitted to bid on or to perform under his or her license and also setting out a letter symbol indicating the maximum limits on which he or she is permitted to bid or to perform in a single contract. The maximum bid limits shall be set by the formula of not more than 10 times either the net worth or working capital, whichever is the lesser amount, as shown by the applicant's latest financial statement and designated in the classification set out herein that is the closest to this amount. Should the financial statement of the applicant fail to substantiate the limits requested, further consideration may be given to (1) the present market value in lieu of book value of listed assets when properly supported with substantiating evidence, and (2) a combined statement of the applicant that includes other wholly owned or substantially owned interests. When an applicant's statement qualifies for an amount in excess of classification "E", the limits shall then be set as classification Unlimited or "U". The following letter symbols indicate the maximum amount bid limits allowed a licensee on any one single contract undertaking:

A	--	Not to exceed	\$ 100,000.00
B	--	Not to exceed	250,000.00
C	--	Not to exceed	500,000.00
D	--	Not to exceed	1,000,000.00
E	--	Not to exceed	3,000,000.00
U	--	Unlimited	

(b) Any person failing to pass the examination may be reexamined at any regular or called meeting of the board. The certificate of authority to engage in the business of general contracting in the State of Alabama shall expire 12 months following its issuance or renewal and shall become invalid on that date unless renewed. The board may provide for a transitional period following May 19, 1999, during which licenses may be renewed for less than 12 months, or more than 12 months, in order to implement a staggered license renewal schedule in which licenses would be renewed each month throughout the year. Once the transitional period is completed, each license shall be renewed for a 12-month period. The board may promulgate rules and regulations relating to the procedures for renewal of licenses. Upon the renewal of a license, the board shall reclassify or confirm the license both as to the types of work and bid limits as specified in this section. A licensee may apply for and, on proof satisfactory to the board, may receive an increase in the amount of his or her bid limit or a change in his or her classification. Application for renewal of a license, together with the payment of a fee of two hundred dollars (\$200), received by the board at least 30 days prior to expiration, shall serve to extend the current license until the board either renews the license or denies the application. At the discretion of the board, a limited license may be issued for a particular project.

The sum or fee of three hundred dollars (\$300) accompanying original applications and sum or fee of two hundred dollars (\$200) accompanying applications for renewals under this section are for the administration and enforcement of this chapter and shall not be refunded to the applicant.

(Acts 1935, No. 297, p. 721, § 9; Code 1940, T. 46, § 73; Acts 1959, No. 571, p. 1429;

Acts 1961, Ex. Sess., No. 150, p. 2093, § 1; Acts 1975, No. 485, p. 1115, § 1; Acts 1982, No. 82-400, p. 603, § 4; Acts 1986, No. 86-557, p. 1133, § 3; Acts 1991, No. 91-197, p. 361, § 3; Acts 1996, No. 96-640, p. 1013, § 1; Act 99-199, p. 251, § 3.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 1991 amendment, effective July 3, 1991, added the second sentence of subsection (a).

The 1996 amendment, effective May 17, 1996, substituted "his or her" for "his", "him or her" for "him", and "he or she" for "he" throughout the section; in subsection (a), in the first sentence deleted "or special" following "regular", substituted "a form as prescribed" for "such form as may then be by the board prescribed", substituted "and the" for ", which" following "examination by the board", substituted "three hundred dollars (\$300)" for "\$200.00", and substituted "two hundred dollars (\$200)" for "\$100.00", and in the seventh sentence inserted "either" preceding "the net worth" and inserted "or working capital, whichever is the lesser amount,"; in subsection (b), in the first paragraph, in the fifth sentence substituted "two hundred dollars (\$200)" for "\$100.00", and in the second paragraph, substituted "three hundred dollars (\$300)" for "\$200.00" and substituted "two hundred dollars (\$200)" for "\$100.00"; and made nonsubstantive changes.

The 1999 amendment, effective May 19, 1999, in subsection (b), in the second sentence substituted "12 months" for "on December 31", and inserted the third and fourth sentences.

REFERENCES

CROSS REFERENCES

As to revenue licenses for construction companies or contractors, see § 40-12-84.

LIBRARY REFERENCES

American Digest System:

Licenses  11(5), 20.

Corpus Juris Secundum:

C.J.S. Agriculture § 4.5; Architects §§ 4, 7; Licenses §§ 34, 39-41.

RESEARCH REFERENCES

Treatises and Practice Aids

Alabama Law of Damages § 17:18, Contractors.

ANNOTATIONS

CASENOTES

Effect of delay in issuing license 1 enter p

"Improvement" 2 enter p

1. Effect of delay in issuing license

Absence of license at contract formation not bar to later recovery on contract where license's issuance was delayed due to third-party error and contractor continued to perform work for developer, whose president continued to acknowledge, both before and after the license was issued, that contractor was entitled to receive payment for this work. *McNairy v. Sugar Creek Resort, Inc.*, 576 So.2d 185 (Ala.1991).

2. "Improvement"

Replacement of worn carpeting cannot be characterized as the construction of an "improvement," the only term in § 34-8-1 under which such work could conceivably fit; thus, the work is not the type of work performed by a general contractor as defined in § 34-8-1. Therefore, the successful bidder for carpet replacement is not required under § 41-16-50 et seq., to be a licensed general contractor. *McCord Contract Floors, Inc. v. City of Dothan*, 492 So.2d 996 (Ala.1986).

Cited in *Dixie Store Fixtures & Sales Co. v. Supreme Fixture Co.*, 376 So.2d 703 (Ala.1979); *Gorman v. Lowery*, 419 So.2d 255 (Ala.Civ.App.1982).

§ 34-8-3. Method of examination. [References](#) [Annotations](#)

When the board conducts an examination of an applicant for a license, as much as three days may be devoted to written or oral examination, within the discretion of the board, to ascertain the ability of the applicant to make a practical application of his knowledge of the profession of general contracting; and the board shall investigate thoroughly the financial responsibility and past record of all applicants, which will include an effort towards ascertaining the qualifications of an applicant in reading plans and specifications, estimating costs, construction ethics and other similar matters. The board shall take all applicants under consideration after having examined them and go thoroughly into the records, oral and written examinations prior to granting any certificate of license. If an applicant is an individual, examination may be taken by his personal appearance for examination, or by the appearance for examination of one or more of his responsible managing employees, and if a copartnership or corporation, or any other combination or organization, by the examination of one or more of the responsible managing officers or members of the executive staff of the applicant's firm according to its own designation.

(Acts 1935, No. 297, p. 721, § 9 1/2 ; Code 1940, T. 46, § 74; Acts 1959, No. 571, p. 1429, § 1.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Licenses  20.

Corpus Juris Secundum:

C.J.S. Architects §§ 4, 7; Licenses §§ 39-41.

ANNOTATIONS

CASENOTES

Cited in Cooper v. Johnston, 283 Ala. 565, 219 So.2d 392 (1969); Dixie Store Fixtures & Sales Co. v. Supreme Fixture Co., 376 So.2d 703 (Ala.1979).

§ 34-8-4. Fines; revocation of licenses. [Historical Notes](#) [References](#) [Annotations](#)

(a) The board may levy and collect an administrative fine of not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000) for any violation of any provision of this chapter or the rules and regulations of the board.

(b) The board may also revoke the certificate of license of any general contractor licensed hereunder who is found guilty of any fraud or deceit in obtaining a license or gross negligence, incompetence or misconduct in the conduct of business. Any person may prefer charges of the fraud, deceit, negligence, or misconduct against any general contractor licensed hereunder. The charges shall be in writing and sworn to by the complainant and submitted to the board. The charges, unless dismissed without hearing by the board as unfounded or trivial, shall be heard and determined by the board within 90 days after the date on which they were preferred. The hearing shall be held at the office of the State Licensing Board for General Contractors in Montgomery, Alabama. A copy of the charges, together with the notice of the time and place of hearing, shall be legally served on the accused by the secretary of the board, any sheriff in the state or by registered or certified mail, at least 10 days before the fixed date for the hearing. In the event that the service cannot be effected 10 days before the hearing, then the date of hearing and determination shall be postponed as may be necessary to permit the carrying out of the aforementioned condition. At the hearing the accused shall have the right to appear personally and by counsel and to cross-examine witnesses against him, her, or them and to produce evidence of witnesses in his, her, or their defense. If, after the hearing, the board votes in favor of finding the accused guilty, the board shall revoke the license of the accused. The board may reissue a license to any person, firm, or corporation whose license has been revoked. The board shall immediately notify the Secretary of State and the clerk of each incorporated city, town, or county in the state of its findings in the case of the revocation or of the reissuance of a revoked license. A certificate of license to replace any certificate lost, destroyed, or mutilated may be issued subject to the rules and regulations of the board.

(Acts 1935, No. 297, p. 721, § 10; Code 1940, T. 46, § 75; Acts 1959, No. 571, p. 1429, § 1; Acts 1982, No. 82-400, p. 603, § 4; Acts 1991, No. 91-197, p. 361, § 3; Acts 1996, No. 96-640, p. 1013, § 1; Act 99-199, p. 251, § 3.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 1991 amendment, effective July 3, 1991, added subsection (a), added the subsection (b) designation, and inserted "additional" near the beginning of the first sentence of subsection (b).

The 1996 amendment, effective May 17, 1996, substituted "the" for "such" and for "said" and "The" for "Such" throughout the section; in subsection (a), substituted "may"

for "shall have the disciplinary power to", substituted "five hundred dollars (\$500)" for "\$100.00" and substituted "five thousand dollars (\$5,000)" for "\$500.00"; in subsection (b), in the first sentence substituted "may also" for "shall have the additional power to", substituted ". In the event" for "; and, in the event" so as to create the seventh sentence, and in such sentence substituted "the aforementioned" for "this"; and made nonsubstantive changes.

The 1999 amendment, effective May 19, 1999, in subsection (a) substituted "violation of" for "licensee who violates".

REFERENCES

LIBRARY REFERENCES

American Digest System:

Licenses  38, 41.

Corpus Juris Secundum:

C.J.S. Agriculture § 4.5; Architects § 10; Licenses §§ 48, 50-63, 78-81.

ANNOTATIONS

CASENOTES

Cited in Dixie Store Fixtures & Sales Co. v. Supreme Fixture Co., 376 So.2d 703 (Ala.1979).

§ 34-8-5. Effect of issuance of certificate of license. [References](#) [Annotations](#)

The issuance of a certificate by the board shall be evidence that the person, firm or corporation named therein is entitled to all the rights and privileges of a licensed general contractor to perform work of the types and amounts specified in the license issued to him or it while the said license remains unrevoked or unexpired.

(Acts 1935, No. 297, p. 721, § 11; Code 1940, T. 46, § 76; Acts 1959, No. 571, p. 1429, § 1.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Licenses  36.

Corpus Juris Secundum:

C.J.S. Licenses §§ 45-48.

ANNOTATIONS

CASENOTES

Cited in Dixie Store Fixtures & Sales Co. v. Supreme Fixture Co., 376 So.2d 703 (Ala.1979).

§ 34-8-6. Prohibited acts; penalties; cease and desist orders. [Historical Notes](#)
[References](#) [Annotations](#)

(a) Any person, firm, or corporation not being duly authorized who shall engage in the business of general contracting in this state, except as provided for in this chapter, and any person, firm, or corporation presenting or attempting to file as its own the license certificate of another, or who shall give false or forged evidence of any kind to the board, or to any member thereof, in obtaining a certificate of license, or who falsely shall impersonate another, or who shall use an expired or revoked certificate of license shall be deemed guilty of a Class A misdemeanor and for each offense for which he or she is convicted shall be punished as provided by law. Furthermore, any person including an owner, architect, or engineer who receives or considers a bid from anyone not properly licensed under this chapter shall be deemed guilty of a Class B misdemeanor and shall for each offense of which he or she is convicted be punished as provided by law.

(b) Every person, firm, or corporation licensed pursuant to this chapter shall include his or her license number in all construction contracts, subcontracts, bids, and proposals. Any person, firm, or corporation violating this provision shall be guilty of a Class B misdemeanor and shall for each offense of which he or she is convicted be punished as provided by law.

(c) In addition to or in lieu of the criminal penalties and administrative sanctions provided in this chapter, the board may issue an order to any person, firm, or corporation engaged in any activity, conduct, or practice constituting a violation of this chapter, directing the person, firm, or corporation to forthwith cease and desist from the activity, conduct, practice, or the performance of any work then being done or about to be commenced. The order shall be issued in the name of the State of Alabama under the official seal of the board. If the person, firm, or corporation to whom the board directs a cease and desist order does not cease or desist the proscribed activity, conduct, practice, or performance of work immediately, the board shall cause to issue in any court of competent jurisdiction and proper venue, a writ of injunction enjoining the person, firm, or corporation from engaging in any activity, conduct, practice, or performance of work as prohibited by this chapter. Upon showing by the board that the person, firm, or corporation has engaged or is engaged in any activity, conduct, practice, or performance of work prohibited by this chapter, the courts shall issue a temporary restraining order restraining the person, firm, or corporation from engaging in such unlawful activity, conduct, practice, or performance of work pending the hearing on a preliminary injunction, and in due course a permanent injunction shall issue after the hearing, commanding the cessation of the unlawful activity, conduct, practice, or performance of work complained of, all without the necessity of the board having to give bond. A temporary restraining order, preliminary injunction, or permanent injunction issued pursuant to this subsection shall not be subject to being released on bond. In the suit for an injunction, the board may demand of the defendant a fine of up to five thousand dollars (\$5,000) plus costs and attorney fees for each offense. A judgment for penalty, attorney fees, and costs may be rendered in the same judgment in which the injunction is made absolute. The trial of the proceeding by injunction shall be summary and by the trial judge without jury. Anyone violating this chapter who fails to cease work, after a hearing and notification from the board, shall not be eligible to apply for a contractor's license for a period not to exceed one year from the date of official notification to cease

work. It shall be within the power of the board to withhold approval, for up to six months, of any application from anyone who prior to the application has been found in violation of this chapter.

(d) The submission of the contractor's current license number before considering the bid shall be sufficient evidence to relieve the owner, architect, engineer, or awarding authority of any liability under this chapter.

(Acts 1935, No. 297, p. 721, § 12; Code 1940, T. 46, § 77; Acts 1959, No. 571, p. 1429, § 1; Acts 1996, No. 96-640, p. 1013, § 1; Act 99-199, p. 251, § 3.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 1996 amendment, effective May 17, 1996, designated the first and second paragraphs as subsections (a) and (d), respectively, and deleted the third paragraph, which related to letting and awarding of highway contracts under \$20,000.00; in subsection (a), as so designated, in the first sentence deleted ", and any person including an owner, architect or engineer who receives or considers a bid from anyone not properly licensed under this chapter," preceding "shall be deemed", inserted "Class A" preceding "misdemeanor", and substituted "and for each offense for which he or she is convicted shall be punished, fined, or both, in accordance with Sections 13A-5-7 and 13A-5-12" for "and shall for each such offense of which he is convicted be punished by a fine of not less than \$500.00 or imprisonment of six months, or both fine and imprisonment, in the discretion of the court", and added the last sentence; added subsections (b) and (c); and made nonsubstantive changes.

The 1999 amendment, effective May 19, 1999, substituted "punished as provided by law" for "punished, fined, or both, in accordance with Sections 13A-5-7 and 13A-5-12" in three places.

REFERENCES

LIBRARY REFERENCES

American Digest System:

Licenses  40.

Corpus Juris Secundum:

C.J.S. Agriculture § 4.5; Architects §§ 3, 5, 7, 12-15; Licenses §§ 82-83; Trading Stamps and Coupons § 6.

RESEARCH REFERENCES

Treatises and Practice Aids

Tilley's Alabama Equity § 2:4, Examples of Rights Not Protected.

ANNOTATIONS

CASENOTES

Generally 1 enter p

1. Generally

Builder violated general-contractor licensing statutes by obtaining a building permit for another builder, who engaged in construction project for which cost of undertaking was \$20,000 without having general contractor's license. *Thomas Learning Center, Inc. v. McGuirk*, 766 So.2d 161 (Ala.Civ.App.1998), rehearing denied, certiorari quashed. Licenses ☒ 40

§ 34-8-7. Exemptions from chapter; subcontractor requirements. [Historical Notes](#)
[References](#)

(a) The following shall be exempted from this chapter:

(1) The practice of general contracting, as defined in Section 34-8-1, by an authorized representative or representatives of the United States Government, State of Alabama, incorporated town, city, or county in this state, which is under the supervision of a licensed architect or engineer and any work contracted out by the representative shall comply with the provisions of this chapter for "general contractor."

(2) The construction of any residence or private dwelling.

(3) A person, firm, or corporation constructing a building or other improvements on his, her, or its own property provided that any of the work contracted out complies with the definition in this chapter for "general contractor."

(4) The installation, repair, maintenance, or removal of facilities, equipment, or systems used in or substantially related to the generation, transmission, or distribution of electric power, natural gas, or telecommunications in an emergency by a utility regulated by the Public Service Commission, or any entity engaged in the generation, transmission, or distribution of electric power, natural gas, or telecommunications, or any of their respective general contractors or subcontractors, provided the work is performed under the supervision of a licensed architect or engineer. For purposes of this subdivision, the term "emergency" is defined as a situation whereby service to the consumer has been interrupted or may be interrupted if work to remedy the emergency is not performed and completed within 60 days, and such other situations that are determined to be an emergency in the discretion of the board.

(5) The repair, maintenance, replacement, reinstallation, or removal of facilities, equipment, or systems used in or substantially related to the generation, transmission, or distribution of electric power, natural gas, or telecommunications on a routine, regular, or recurring basis by a utility regulated by the Public Service Commission or any entity engaged in the generation, transmission, or distribution of electric power, natural gas, or telecommunications or any of their respective general contractors or subcontractors, provided the work is performed under the supervision of a licensed architect or engineer.

(6) Routine or regular maintenance, repair, replacement, reinstallation, or removal of equipment, specialized technological processes, or equipment facility systems as determined by the board with regard to scope, frequency, and speciality of the work to be performed.

(b) The aforementioned exemptions shall exclude a swimming pool contractor.

Provided, however, a person, firm, or corporation constructing a swimming pool on his, her, or its own property shall be exempted from this chapter.

(c) A subcontractor, as defined in subsection (c) of Section 34-8-1, is subject to and shall comply with all the provisions of this chapter as specified for general contractor except as follows:

(1) A subcontractor shall pay one-half the fees as required in this chapter for general contractor.

(2) No bid limits shall be established for a subcontractor.

(3) A subcontractor shall submit with license application and renewals a statement of financial condition as prescribed by the board.

(4) A subcontractor shall furnish three references from any combination of the following: Licensed general contractors, registered professional engineers, or registered architects, for whom work has been completed, along with a statement of experience, personnel, and equipment.

(5) A subcontractor is not required to be licensed at the time a project is bid, but must be licensed with the board prior to beginning work on the project.

(6) A general contractor license and license number issued by the board to subcontractors shall denote subcontractor status.

(7) A subcontractor's application for license with the board shall be filed no less than 15 days prior to any regular meeting of the board.

(Acts 1935, No. 297, p. 721, § 13; Code 1940, T. 46, § 78; Acts 1959, No. 571, p. 1429, § 1; Acts 1989, No. 89-648, p. 1278, § 2; Acts 1996, No. 96-640, p. 1013, § 1; Acts 1997, No. 97-270, p. 486, § 1; Act 99-199, p. 251, § 3.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 1996 amendment, effective May 17, 1996, in subsection (a), inserted ", except a subcontractor who contracts with a licensed general contractor for the purpose of continuing to work after having been found to be working illegally as an unlicensed general contractor," and inserted "her," following "his,"; in subsection (b), in the first sentence deleted "whether he be a 'general contractor' as defined in Section 34-8-1(b) or a subcontractor" following "pool contractor", and in the second sentence inserted ", her," following "his"; and made nonsubstantive changes.

The 1997 amendment, effective January 1, 1998, in subsection (a) inserted the subdivision (1), (2) and (3) designators, in subdivision (1), as so designated, substituted "The" for "the" preceding "practice", substituted "which is" for "provided that such operation shall be" and substituted "and any work contracted out by the representative shall comply with the provisions of this chapter for 'general contractor'." for "; the", in subdivision (2), as so designated, inserted "The" and substituted a concluding period for "; a subcontractor performing work under a properly licensed general contractor, except a subcontractor who contracts with a licensed general contractor for the purpose of continuing to work after having been found to be working illegally as an unlicensed general contractor, and", and in subdivision (3), as so designated, substituted "A" for "a" and substituted "provided that any of the work contracted out complies with the definition in this chapter for 'general contractor.'" for the concluding period; and added subsection (c).

The 1999 amendment, effective May 19, 1999, in subsection (a) added subdivisions

(4) through (6); and made nonsubstantive changes.

REFERENCES

LIBRARY REFERENCES

American Digest System:

Licenses ☒ 19(3).

Corpus Juris Secundum:

C.J.S. Agriculture § 4.5; Architects § 11; Licenses §§ 35-36.

§ 34-8-8. Copy of chapter to be included in plans of owners, architects, and engineers; inclusion of license number on bid. [Historical Notes](#) [References](#)
[Annotations](#)

(a) All owners, architects, and engineers preparing plans and specifications for work to be contracted in Alabama pursuant to this chapter shall include in their invitations to bidders, including but not limited to all public and private advertisements, and their specifications a copy of this chapter or the portions thereof as are deemed necessary to convey to the invited bidder, whether he or she is a resident or nonresident of this state and whether a license has been issued to him or her or not, the information that it will be necessary for him or her to show evidence of license before his or her bid is considered. Any person including an owner, architect, or engineer who violates this section shall be guilty of a Class B misdemeanor and shall for each offense of which he or she is convicted be punished, fined, or both, in accordance with Sections 13A-5-7 and 13A-5-12.

(b) All owners, architects, and engineers receiving bids pursuant to this chapter shall require the person, firm, or corporation to include his or her current license number on the bid. The owner, architect, and engineer shall reject all bids that do not contain the current license number of the general contractor submitting the bid. All persons who violate this subsection shall be guilty of a Class C misdemeanor and shall for each offense for which he or she is convicted be punished, fined, or both, in accordance with Sections 13A-5-7 and 13A-5-12.

(Acts 1935, No. 297, p. 721, § 14; Code 1940, T. 46, § 79; Acts 1959, No. 571, p. 1429, § 1; Acts 1996, No. 96-640, p. 1013, § 1.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 1996 amendment, effective May 17, 1996, designated the existing text as subsection (a) and added subsection (b); in subsection (a), as so designated, inserted "owners," deleted "the state of" preceding "Alabama", inserted "pursuant to this chapter", inserted ", including but not limited to all public and private advertisements,", substituted "he or she" for "he", substituted "him or her" for "him" in two places, substituted "his or

her" for "his", and added the second sentence; and made nonsubstantive changes.

REFERENCES

LIBRARY REFERENCES

American Digest System:

Licenses  25.

Corpus Juris Secundum:

C.J.S. Agriculture § 4.5; Licenses §§ 41, 45-46.

ANNOTATIONS

CASENOTES

Cited in *Dixie Store Fixtures & Sales Co. v. Supreme Fixture Co.*, 376 So.2d 703 (Ala.1979).

§ 34-8-9. Issuance of building permits. [Historical Notes](#) [References](#) [Annotations](#)

Any person, firm, or corporation, upon making application to the building inspector or such other authority of any incorporated city, town, village, or county in Alabama charged with the duty of issuing building or other permits for the construction, alteration, maintenance, repair, rehabilitation, remediation, reclamation, or demolition of any building, highway, sewer, structure site work, grading, paving or project or any improvement where the cost of the undertaking is fifty thousand dollars (\$50,000) or more, shall, before he or she shall be entitled to the issuance of permits, furnish satisfactory proof to the inspector or authority that he or she is duly licensed under this chapter. It shall be unlawful for the building inspector or other authority to issue or allow the issuance of the building permit unless and until the applicant has furnished evidence that he or she is either exempt from this chapter or is duly licensed under this chapter to carry out or superintend the work for which the permit has been applied. The building inspector, or other authority, violating the terms of this section shall be guilty of a Class C misdemeanor and shall for each offense of which he or she is convicted be punished in accordance with Sections 13A-5-7 and 13A-5-12.

(Acts 1935, No. 297, p. 721, § 15; Code 1940, T. 46, § 80; Acts 1947, No. 402, p. 293, § 1; Acts 1959, No. 571, p. 1429, § 1; Acts 1987, No. 87-175, p. 236, § 3; Acts 1996, No. 96-640, p. 1013, § 1; Acts 1997, No. 97-270, p. 486, § 1.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 1996 amendment, effective May 17, 1996, substituted "he or she" for "he" and substituted "the" for "such" throughout the section; in the first sentence substituted "twenty thousand dollars (\$20,000)" for "to be \$20,000.00"; substituted ". It" for "; and it" so as to create the second sentence; substituted ". The" for "; and such" so as to create the third sentence, and in such sentence deleted "such" preceding "authority", inserted "Class C", and substituted "shall for each offense of which he or she is convicted be

punished in accordance with Sections 13A-5-7 and 13A-5-12 of the Code of Alabama 1975" for "subject to a fine of not more than \$50.00"; and made nonsubstantive changes.

The 1997 amendment, effective January 1, 1998, inserted ", alteration, maintenance, repair, rehabilitation, remediation, reclamation, or demolition", inserted "structure site work,", inserted "paving or project", and substituted "of the undertaking is fifty thousand dollars (\$50,000)" for "thereof is twenty thousand (\$20,000)".

Code Commissioner's Notes

In 1996, the Code Commissioner, in the next to last sentence, inserted "the" before "permit has been applied." for grammatical purposes.

REFERENCES

LIBRARY REFERENCES

American Digest System:

Municipal Corporations ☒ 621.

Corpus Juris Secundum:

C.J.S. Municipal Corporations §§ 163-171.

ANNOTATIONS

CASENOTES

Generally 1 enter p

1. Generally

Builder's act of obtaining building permit for another builder in violation of general-contractor licensing statutes did not provide owner of building a cause of action for negligence against builder who obtained permit; licensure statutes were not enacted for benefit of owner as distinguished from the public generally. Thomas Learning Center, Inc. v. McGuirk, 766 So.2d 161 (Ala.Civ.App.1998), rehearing denied, certiorari quashed. Negligence ☒ 1205(2)

Cited in Dixie Store Fixtures & Sales Co. v. Supreme Fixture Co., 376 So.2d 703 (Ala.1979).

§ 34-8-10. Indictment or complaint. [References](#) [Annotations](#)

In all prosecutions for the violation of the provisions of Section 34-8-6 for engaging in the business of general contracting without a certificate of authority, it shall be sufficient to allege in the indictment, affidavit or complaint that "A. B. unlawfully engaged in business as a general contractor, without authority from the licensing board for contractors so to do."

(Acts 1935, No. 297, p. 721, § 16; Code 1940, T. 46, § 81; Acts 1959, No. 571, p. 1429, § 1.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Licenses  42.

Corpus Juris Secundum:

C.J.S. Licenses § 85.

ANNOTATIONS

CASENOTES

Cited in *Dixie Store Fixtures & Sales Co. v. Supreme Fixture Co.*, 376 So.2d 703 (Ala.1979).

ARTICLE 2. STATE LICENSING BOARD.

REFERENCES

ADMINISTRATIVE CODE

4 Ala. Admin. Code 230-X-2-.01 et seq., Licensing Board for General Contractors;
Description of Organization.

§ 34-8-20. Creation; composition; appointment and removal of members.

Historical Notes References

In order to safeguard life, health, and property and to promote the general public welfare by requiring that only properly qualified persons be permitted to engage in general contracting, there shall be a State Licensing Board for General Contractors, consisting of five members, who shall be appointed by the Governor. Each of the members shall be a general contractor, within the meaning of this chapter, with at least 10 years' experience in the field as a contractor. At least one member of the board shall have as a larger part of his or her business the construction of highways. At least one member of the board shall have as a larger part of his or her business the construction of public utilities. At least one member shall have as a larger part of his or her business the construction of buildings. The members of the board shall be appointed for one, two, three, four, and five years respectively, their terms of office expiring on December 31 of those years. Thereafter, on the thirty-first day of December in each year the Governor shall appoint to fill the vacancies caused by the expiration of the term of office a member for a term of five years. In appointing members to the board, the Governor shall select those persons whose appointments, to the extent possible, ensure that the membership of the board is inclusive and reflects the racial, gender, urban/rural, and economic diversity of the state. Each member shall hold over after the expiration of his or her term until his or her successor shall be duly appointed and qualified. If a vacancy shall occur on the board for any cause, the vacancy shall be filled by the appointment of the Governor, and the Governor may remove any member of the board at any time, with or without cause.

(Acts 1935, No. 297, p. 721, § 2; Code 1940, T. 46, § 66; Acts 1959, No. 571, p. 1429, § 1; Acts 1996, No. 96-640, p. 1013, § 1; Act 99-199, p. 251, §§ 2, 3; Act 2003-142, p. 441, § 3.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 1996 amendment, effective May 17, 1996, substituted "the" for "such", substituted "the" or "those" for "said", and substituted "his or her" for "his" throughout the section; in the second sentence deleted "such" preceding "a contractor"; in the last sentence deleted ", and the Governor may remove any member of the board at any time, with or without cause" preceding the concluding period; and made nonsubstantive changes.

The 1999 amendment, effective May 19, 1999, added ", and the Governor may remove any member of the board at any time, with or without cause".

The 2003 amendment, effective June 13, 2003, added the eighth sentence.

Code Commissioner's Notes

Section 2, Acts 1987, No. 87-175 provides: "The existence and functioning of the Licensing Board for General Contractors, created pursuant to Section 34-8-20, specifically, and Sections 34-8-1 through 34-8-27, generally, of the Code of Alabama 1975 are hereby continued, and such code sections are hereby expressly continued."

Section 2 of Acts 1990, No. 90-108 provides: "The existence of the general contractors board, created and functioning pursuant to sections 34-8-1 through 34-8-27, Code of Alabama 1975, is hereby continued, and said code sections are hereby expressly preserved."

Acts 1991, No. 91-197, § 2 provides: "The existence of the state licensing board for general contractors, created and functioning pursuant to sections 34-8-1 through 34-8-27 of the Code of Alabama 1975, is hereby continued, and said code sections are hereby expressly preserved."

Acts 1995, No. 95-193, § 2 provides: "The existence and functioning of the State Licensing Board for General Contractors, created and functioning pursuant to Sections 34-8-1 to 34-8-28, inclusive, Code of Alabama 1975, is continued, and those code sections are expressly preserved."

Act 99-199, § 2 provides: "The existence and functioning of the State Licensing Board for General Contractors, created and functioning pursuant to Sections 34-8-1 to 34-8-28, inclusive, Code of Alabama 1975, is continued, and those code sections are expressly preserved."

Act 2003-142, § 2, provides: "The existence and functioning of the State Licensing Board for General Contractors, created and functioning pursuant to Sections 34-8-1 to 34-8-28, inclusive, Code of Alabama 1975, is continued until October 1, 2004, and those code sections are expressly preserved."

Act 2004-75, § 2 provides: "The existence and functioning of the State Licensing Board for General Contractors, created and functioning pursuant to Sections 34-8-1 to 34-8-28, inclusive, Code of Alabama 1975, is continued, and those code sections are expressly preserved."

REFERENCES

LIBRARY REFERENCES

American Digest System:

Licenses ☒21; States ☒45.

Corpus Juris Secundum:

C.J.S. Agriculture § 4.5; Architects § 4; Licenses §§ 37-38; States §§ 79-80, 82, 136.

§ 34-8-21. Oath of board. [References](#)

Each member of the board shall before entering upon the discharge of the duties of his office take and file with the Secretary of State the oath required by Section 279 of the Constitution of Alabama.

(Acts 1935, No. 297, p. 721, § 3; Code 1940, T. 46, § 67; Acts 1959, No. 571, p. 1429, § 1.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Licenses ☒21.

Corpus Juris Secundum:

C.J.S. Agriculture § 4.5; Architects § 4; Licenses §§ 37-38.

§ 34-8-22. Officers; bonds; compensation and expenses; rules and regulations.

[Historical Notes](#) [References](#)

When the Governor appoints the board, he or she shall designate and commission one member as the chairperson, another as vice-chairperson, and another as secretary-treasurer. The board may make the bylaws, rules, and regulations as it shall deem best, provided the same shall not conflict with the laws of the State of Alabama. The secretary-treasurer shall give bond in the sum as the board shall determine with the surety as shall be approved. The bond shall be conditioned upon the faithful performance of the duties of the office and for the faithful accounting of all moneys and other properties as shall come into his or her hands. Each member of the board shall receive two hundred dollars (\$200) per day for attending sessions of the board or its committees, and for time actually spent in necessary travel in attending meetings of the board or its committees and in addition shall be reimbursed for necessary travel expenses as are paid to state employees incurred in carrying out this chapter. All expenses certified by the board as properly and necessarily incurred in the discharge of its duties, including authorized compensations, office rent, and supplies shall be paid out of the State Licensing Board for the General Contractors' Fund in the State Treasury in the manner provided in Section 34-8-25, provided, that no funds shall be withdrawn or expended except as budgeted and allotted according to the provisions of Article 4 of Chapter 4 of Title 41, and only in the

amounts as stipulated in the general appropriation bill.

(Acts 1935, No. 297, p. 721, § 4; Code 1940, T. 46, § 68; Acts 1951, No. 835, p. 1466, § 1; Acts 1959, No. 571, p. 1429, § 1; Acts 1980, No. 80-698, p. 1404, § 1; Acts 1996, No. 96-640, p. 1013, § 1.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 1996 amendment, effective May 17, 1996, substituted "the" for "such" and for "said", "The" for "Said", "he or she" for "he", and "his or her" for "his" throughout the section; in the first sentence substituted "the chairperson" for "chairman" and substituted "vice-chairperson," for "vice-chairman"; in the second sentence substituted "may" for "shall have the power to"; substituted ". The bond" for ", said bond" so as to create the fourth sentence, and in such sentence substituted "shall be conditioned" for "to be conditioned" and substituted "the office" for "his office"; in the fifth sentence substituted "two hundred dollars (\$200)" for "\$50.00" and substituted "travel expenses as are paid to state employees" for "traveling and clerical expenses"; and made nonsubstantive changes.

REFERENCES

LIBRARY REFERENCES

American Digest System:

Licenses  21.

Corpus Juris Secundum:

C.J.S. Agriculture § 4.5; Architects § 4; Licenses §§ 37-38.

RESEARCH REFERENCES

Forms

Am. Jur. Pl. & Pr. Forms Contractors' Bonds § 2, Statutory References.

§ 34-8-23. Seal. [References](#)


The board shall adopt a seal for its own use. Such seal shall have the words "License Board for Contractors, State of Alabama," and the secretary shall have the charge, care and custody thereof.

(Acts 1935, No. 297, p. 721, § 5; Code 1940, T. 46, § 69; Acts 1959, No. 571, p. 1429, § 1.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Licenses  21.

Corpus Juris Secundum:

C.J.S. Agriculture § 4.5; Architects § 4; Licenses §§ 37-38.

§ 34-8-24. Meetings; quorum. [Historical Notes](#) [References](#)

The board shall have four regular meetings in each year, one in January, one in April, one in July, and one in October, for the purpose of transacting business which may properly come before it, and as many special or adjourned meetings as the board may deem necessary, on call of the chair of the board. Special or adjourned meetings may be held at the time the board provides in the bylaws or at a time the board may provide by reasonable resolution. Due notice of each regular meeting and the time and place thereof shall be given to each member by mail at least one week prior to the meeting. Three members of the board shall constitute a quorum.

(Acts 1935, No. 297, p. 721, § 6; Code 1940, T. 46, § 70; Acts 1959, No. 571, p. 1429, § 1; Acts 1986, No. 86-557, p. 1133, § 3; Acts 1996, No. 96-640, p. 1013, § 1.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 1996 amendment, effective May 17, 1996, in the first sentence, substituted "business which" for "such business as" and substituted "chair" for "chairman"; in the second sentence, substituted "the time" for "such time as", substituted "provides in" for "may provide by", deleted "it shall adopt" following "bylaws", and substituted "a time" for "such time as"; in the third sentence, substituted "regular meeting" for "meeting"; and made nonsubstantive changes.

REFERENCES

LIBRARY REFERENCES

American Digest System:

Licenses  21.

Corpus Juris Secundum:

C.J.S. Agriculture § 4.5; Architects § 4; Licenses §§ 37-38.

§ 34-8-25. Records and accounts. [Historical Notes](#) [References](#)

The secretary-treasurer shall keep a record of the proceedings of said board, shall receive and account for all the moneys derived from the operation of this chapter and shall deposit, or cause to be deposited, all such moneys in the State Treasury to the credit of the State Licensing Board for General Contractors; and said funds shall be subject to withdrawal only upon warrant of the state Comptroller to be issued upon certificate or voucher certified by the secretary-treasurer of the board. Any funds remaining in the State Treasury to the credit of the State Licensing Board for General Contractors at the end of each year shall be paid into the General Fund of the state on or before January 15 in each succeeding year. The board has the right, however, at all times to retain a sum not in excess of \$30,000.00 to meet any emergency that may arise which may affect its efficient operation.

(Acts 1935, No. 297, p. 721, § 7; Code 1940, T. 46, § 71; Acts 1951, No. 835, p. 1466, § 2; Acts 1975, No. 485, p. 1115, § 1; Acts 1991, No. 91-197, p. 361, § 3.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 1991 amendment, effective July 3, 1991, deleted "and approved by the Governor" at the end of the first sentence.

REFERENCES

LIBRARY REFERENCES

American Digest System:

Licenses  21, 33.

Corpus Juris Secundum:

C.J.S. Agriculture § 4.5; Architects § 4; Licenses §§ 37-38, 71.

§ 34-8-26. Register of applicants; roster of contractors; annual report; investigation and report of complaints. [References](#)

The secretary-treasurer shall keep a record of the proceedings of the board and a register of the applicants for license, showing for each the date of application, name, qualifications, place of business and whether the license was granted or refused. The books and register of this board shall be prima facie evidence of all matters recorded therein, and a certified copy of such books or register, under the seal of the board, attested by its secretary, shall be received in evidence in all courts in this state in lieu of the original.

A roster showing the names and places of business of all licensed general contractors shall be prepared by the secretary of the board as soon as convenient after the board first meets each year. Such roster, which shall include a copy of the licensing law, shall be printed by the board out of funds of said board, as provided in Section 34-8-25, and a copy mailed to and placed on file by the clerk of each incorporated city and town in the state and to and by the probate judge of each county in the state.

On or before March 1 of each year, the board shall submit to the Governor a report of its transactions for the preceding year and shall file with the Secretary of State a copy of such report, together with a complete statement of receipts and expenditures of the board, attested by the affidavit of the chairman and secretary and a copy of said roster of licensed general contractors.

It shall be the duty of the secretary-treasurer to investigate and report to the board each complaint filed relative to violation of this chapter.

(Acts 1935, No. 297, p. 721, § 8; Code 1940, T. 46, § 72; Acts 1959, No. 571, p. 1429, § 1.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Licenses  21, 24.

Corpus Juris Secundum:

C.J.S. Agriculture § 4.5; Architects § 4; Licenses §§ 37-38.

§ 34-8-27. Appeals. [References](#)

Any party aggrieved by any decision of the State Licensing Board, either in denying an application for license as a general contractor or in revoking a license, may appeal to the Circuit Court of Montgomery County by filing a bond with the clerk of said court, conditioned to pay all costs of the appeal. Upon notice of said appeal being served upon the Licensing Board, an issue shall be made up by the court between the appellant and the Licensing Board, in which the appellant shall allege in what respect the action of the Licensing Board was erroneous and prejudicial to him; whereupon the court shall hear the evidence and, without regard to the decision of the Licensing Board, shall render such decision as the court is of the opinion the Licensing Board should have rendered in the first instance.

(Acts 1935, No. 297, p. 721, § 17; Code 1940, T. 46, § 82; Acts 1959, No. 571, p. 1429, § 1.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Licenses  22, 38.

Corpus Juris Secundum:

C.J.S. Agriculture § 4.5; Architects §§ 9-10; Licenses §§ 43, 48, 50-63.

§ 34-8-28. Disposition of funds; annual report. [Historical Notes](#) [References](#)

(a) An amount of one hundred dollars (\$100) from the fees required for application and renewal for certification and registration of general contractors in Section 34-8-2, and an amount of fifty dollars (\$50) from the fees required for application and renewal of the license of a subcontractor pursuant to Section 34-8-7, shall be distributed by the State Licensing Board for General Contractors at the end of each fiscal year to all accredited public institutions of higher education offering American Council for Construction Education accredited courses in building science, and to all accredited public institutions of higher education offering courses in building science which are in the candidate status of the American Council for Construction Education and to institutions of higher education offering courses leading to a bachelor of civil engineering degree which offers courses in highway engineering and construction at the undergraduate and graduate levels and whose civil engineering program is accredited by the Engineering Accreditation Commission of the Accreditation Board for Engineering and Technology (ABET). Funds identified by the general contractors and subcontractors for building science shall be distributed pro rata among institutions based upon the number of full-time equivalent students enrolled in the department of building science at the institution. Funds identified by the general contractors and subcontractors for civil engineering shall be distributed pro rata among institutions based upon the number of full-time equivalent civil and pre-civil engineering students enrolled at the institution.

(b) Revenue derived from the additional fees for all licenses shall be distributed for (1) building science (general construction) purposes and (2) civil engineering (highway engineering or construction, or both) purposes. Contractors shall be given an opportunity to select which program they want to support.

(c) Revenues derived from the additional fees for all licenses that are not specifically designated by contractors for one of the purposes above, shall be distributed between the programs defined in subsection (a) in a pro rata manner based on the number of full-time equivalent students enrolled in each program at each institution.

(d) Each institution receiving funds pursuant to this article for building science purposes shall utilize the funds for research projects relating to the construction industry, for faculty development, for program enhancement, and for continuing education programs related to construction. The funds shall be administered by a committee appointed by the dean responsible for the building science program, and shall include the head of the department of building science, or comparable position, faculty representatives, and representatives of the building science industry advisory committee of the institution.

(e) Each institution receiving funds pursuant to this article for civil engineering purposes shall utilize the funds to enhance activities in the highway engineering or construction area, or both. This includes but is not limited to scholarships, fellowships, research, faculty development, and continuing education. Funds received pursuant to this article shall be administered by a committee appointed by the dean of engineering. The committee should undertake, as part of its mission, to work with the public and private sectors of the highway industry to encourage student participation in co-op and summer industry employment programs as well as to lead students toward career employment in the highway industry upon graduation.

(f) Each institution receiving funds pursuant to this article shall provide to the board an annual report on or before January 31 for the preceding fiscal year during which the institution received the funds. This report shall disclose the total amount of funds received by the institution pursuant to this article and shall provide an accurate accounting for the utilization of the funds. The report shall disclose sufficient detail to demonstrate compliance with the utilization specifications prescribed in subsections (d) and (e). Responsibility for the reports shall be retained by the administrative committees formed pursuant to subsections (d) and (e) and the dean appointing the committee.

(g) The board shall retain an amount of five percent of the amount to be distributed pursuant to subsection (a) as a fee for administrative expenses associated with the collection and distribution of the funds.

(h) The provisions of this amendatory section are remedial and curative and shall be retroactive to January 1, 1998.

(Acts 1991, No. 91-473, p. 857, §§ 1-4; Acts 1993, No. 93-614, p. 1006, § 1(11); Acts 1996, No. 96-640, p. 1013, § 1; Act 2003-142, p. 441, § 3.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 1996 amendment, effective May 17, 1996, substituted "the" for "such" and "The" for "Such" throughout the section; in subsection (a), deleted the former first

sentence, which provided for an additional \$100 fee to be paid at the time of application or renewal of licenses, in the present first sentence substituted "An amount of one hundred dollars (\$100) from the fees required for application and renewal for certification and registration of general contractors in Section 34-8-2 shall be distributed by" for "The revenue derived from such additional fees shall be distributed by" and substituted "fiscal year" for "licensing period"; in subsection (d), in the first sentence substituted "engineering or construction area, or both" for "engineering and/or construction area"; added new subsections (e) and (f); and made nonsubstantive changes.

The 2003 amendment, effective June 13, 2003, in subsection (a) inserted ", and an amount of fifty dollars (\$50) from the fees required for application and renewal of the license of a subcontractor pursuant to Section 34-8-7," and inserted "and subcontractors" in two places; in subsection (b) substituted "shall be distributed" for "will be distributed", substituted "or construction, or both" for "and/or construction"; designated subsections (c) through (f) as subsections (d) through (g); designated subsection (c); in subsection (e) inserted "received"; in subsection (f) substituted "(d) and (e)" for "(c) and (d)" in two places, and substituted "dean appointing the committee" for "appointing dean thereof"; and added subsection (h).

REFERENCES

LIBRARY REFERENCES

American Digest System:

Licenses  33.

Corpus Juris Secundum:

C.J.S. Licenses § 71.

Board Members

WAYNE GORDON
Chairman
BIRMINGHAM

FOY TATUM
Vice Chairman
MONTGOMERY

KEITH ANDREWS
Secretary-Treasurer
TUSCALOOSA

CHIP GRIZZLE
Member
BIRMINGHAM

ALEX WHALEY, SR.
Member
TROY



ALABAMA LICENSING BOARD FOR GENERAL CONTRACTORS

(www.genconbd.state.al.us)

JOSEPH C. ROGERS, JR.
EXECUTIVE SECRETARY

2525 FAIRLANE DRIVE
MONTGOMERY, ALABAMA 36116

TELEPHONE NO. 334-272-5030
FAX NO. 334-395-5336

March 2, 2007

For Examiners of Public Accounts Board Member Information

Board Member Name	Address	Term Expires	Construction Represented
Hon. Wayne Gordon Chairman	3238 Heathrow Downs Hoover, AL 35226	12/31/2008	Building
Hon Foy Tatum Vice Chairman	Halstead Contractors 5455 Troy Highway Montgomery, AL 36116	12/31/2007	Building
Hon. Keith Andrews Secretary-Treasurer	RaCon Inc 7300 Commerce Street Tuscaloosa, AL 35401	12/31/2011	Highways
Hon. Chip Grizzle Member	Brasfield & Gorrie 729 South 30 th Street Birmingham, AL 35233	12/31/2010	Public Utilities
Hon. Alex Whaley Sr. Member	Whaley Construction Co Inc 225 Madison Street Troy, AL 36081	12/31/2009	Building
Official Mr. Joseph C. Rogers Executive Secretary (P) 334-272-5030 (F) 334-395-5336	Licensing Board for General Contractors 2525 Fairlane Drive Montgomery, AL 36116		

Respectfully,

Joseph C. Rogers, Jr.
Executive Secretary

JCR/jg

Agency Response to Significant Items

WAYNE GORDON
Chairman
BIRMINGHAM

FOY TATUM
Vice Chairman
MONTGOMERY

KEITH ANDREWS
Secretary-Treasurer
TUSCALOOSA

CHIP GRIZZLE
Member
BIRMINGHAM

ALEX WHALEY, SR.
Member
TROY



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EXECUTIVE SECRETARY

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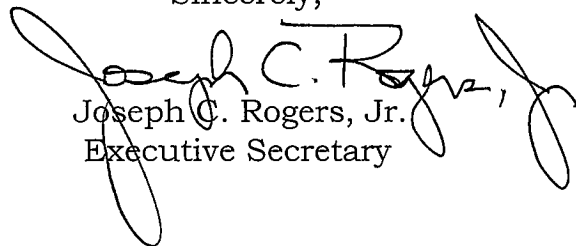
July 31, 2007

Mr. John E. Norris
Director, Operational Division
Examiners of Public Accounts
Gordon Persons Building
50 North Ripley Street, Room 3201
Montgomery, Alabama 36104

Dear Mr. Norris:

Please find enclosed our responses to the significant items for the report to the Sunset Committee on the operation of the Licensing board for General Contractors. If you have any questions after your review our responses, you can contact me at 334-277-0524 or email me at joseph.rogers@genconbd.alabama.gov.

Sincerely,


Joseph C. Rogers, Jr.
Executive Secretary

Alabama Licensing Board for General Contractors
Significant Items

1. **The Board's administrative rules levy two fees that the board has no authority to charge.**

The Board has never used either of these rules to charge fees. Examinations are given by an outside firm who handles all the fees and testing. The Board is in the process of changing administrative Rule 230-x-1-.34(2) to clear up this meaning to say that the applicant will be charged a fee for each written and for oral written examination by the testing agency. Administrative Rule 230-x-1-.34(7) is being changed to take the fee out of the rule. Again neither of these rules have ever been used.

2. **Seven sections of the Administrative Rules presented on the Licensing Board for General Contractor's website are not current.**

In September 2006, we reprinted our rule book with all our new rules updated. All the verbiage in the rules is correct; however, the history of the rules was not expanded. At the same time we updated the rulebook, the webmaster did not take the disk and update the website as should have been done. This has all been changed now as the rule book has been updated and the website updated. The verbiage and history matches what is in the Administrative Rules and Statutes at the Legislative Reference Service. As we move forward, changes made in Administrative Rules will be signed off by the author of rule book and webmaster.

3. **The Board does not maintain a current record of the qualifying agent for each license.**

As a person takes an examination, our examination coordinator (EC) had been entering that name into the company's file as their qualifier. Our EC was supposed to be the contact with the qualifier whenever they left their employment and the contractor should have been notified they would have to get a new qualifier. There was a miscommunication between the EC and the license specialist. The qualifier would notify the license specialist they were leaving and not the EC. The license specialist would fail to notify the EC. Henceforth, some companies went without a qualifier.

We have now put a new procedure in place to remedy this problem.

First, the license specialist is now responsible for knowing who the qualifier is for their contractors and letting the contractor and qualifier know they are the contact person if there are any changes in the qualifier. Secondly, the information on our database was changed

Alabama Licensing Board for General Contractors
Significant Items

to give a history of qualifiers for each contractor. Finally on renewal forms we are now using the question, "Has your test qualifier changed?" as a check.

This procedure will help us to alleviate the qualifying agent problem.

4. **The Board does not always require three references from applicants for licensure as a subcontractor, all though the law requires three references.**

It has been found that numerous subcontractors only work for one contractor. There are people who have excellent skills and an abundance of experience in the classification they are applying for. They have never worked for a registered professional engineer or a registered architect. Especially when there are small good subcontractors, contractors try to hold onto them because they are so much in demand.

Because of the situation I have stated above, the Board will seek a change in the verbiage of section 34-8-7(c)(4) of the Code of Alabama 1975 in the 2008 legislative session to alleviate this problem.

5. **The Board does not appear to be distributing funds to all accredited public institutions of higher education on Alabama offering courses in building services and/or civil engineering as required by law.**

In 2003 when I became Executive Secretary, some of the first people to contact me were representatives from the five universities and one junior college asking me when I would be distributing the funds for higher education. I believed at that time these people were the only people who were eligible since they were so intense on getting the funds. I thought all institutions of higher education had a representative from their university in Montgomery to be sure they were participating in all programs they were eligible for. I was wrong and have contacted Dr. Pabitra Saha, Chairman of the Civil Engineering Department of Alabama A & M to meet with him to explain how to be considered as a possible recipient of funds.

Alabama Licensing Board for General Contractors
Status of Prior Findings and Significant Items

Prior Significant Items. The Board does not make timely distribution of funds collected for distribution to public institutions of higher education at the end of each fiscal year as required by law.

At the beginning of the fiscal year in October, we transfer any unspent, unobligated funds in excess of \$30,000 to the States' General Fund. Since we have been instructed to stagger renewals, we only collect funds from contractors whose names begin with C, B, and A in October, November, and December. In January and February we do not collect any renewals. Therefore, we have to hold the distribution to public institutions until later in the year to be able to fund operation of the agency. As stated, legislation was introduced, however, it was unsuccessful. We will attempt to introduce remedial legislation in the 2008 legislature.

Prior Finding. The Board utilized temporary employees to the extent that it appears to be circumventing a requirement to employ its personnel through the State's merit system.

The Board has not tried to circumvent any rules of the State's merit system. The use of temporary employees was a cost savings act for the agency and the State. State Personnel Department procedures Manual Section 5 Part 2 which address temporary appointments apply to items which happened in 2004 that were unintentional. We did not realize hiring from a temporary agency applied to this rule.

As fees collected have gotten better, we have added more full time staff. We have added an ASA I, just added a fulltime clerk position, and have plans for a position for a Retired State Employee.